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REPORTING TO THE COURT

by

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ABSTRACT

This thesis is concerned with social inquiry and/or pre-sentence reports in criminal cases. These reports are compiled by probation officers, at the request of the court, to assist the court in reaching an appropriate sentencing decision in some criminal cases. This study takes place against and draws upon a wealth of material that has contributed to what is now a considerable body of knowledge but which has also left gaps in our understanding of the ways in which probation reports are constituted and constructed and the implications of this to the wider administration of justice.

Empirical accounts of probation reports have largely consisted of documentary analyses or quantitative data. The inherent partiality of these approaches has meant that reports have been artificially decontextualised from their operational moorings.

Probation practice has been theoretically located along a care-control continuum that has reflected the historical evolution of sentencing strategies and state intervention into welfare practice.

The aim of this thesis is to present a contextualised account of probation reports. In order to unravel and reveal the processes, philosophies and strategies related to report writing and to address the impact of these in the judicial arena, the study was conducted from a grounded observational perspective that acknowledges the complexities of report compilation at the interactive, organisational and systems levels.

In adopting this approach it is clear that the care-control model that has been applied to other areas of probation practice is not necessarily conducive to the practice of report compilation because whilst it applies to the role of the probation officer in relation to supervising offenders, it is not readily transferable to the relationship that exists between report writers and sentencers. This relationship is extremely important to both the impact and the content of reports, to the extent that the offender becomes incidental, as opposed to central, to the final document if not to the process. I suggest therefore that, whilst different areas of

probation practice are not mutually exclusive, probation reports might be understood in terms of a role-function model.

The role of the report writer and the function of the report emanate from an historical context that continues to have an impact on contemporary probation practice but which has rarely been the object of study at an operational level. This thesis attempts to redress the theoretical and empirical balance by adopting a qualitative approach that incorporates an historical perspective into the analysis.

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AP

Chapter One

Introduction and Overview

This thesis is concerned with social inquiry and/or pre-sentence reports in criminal cases as one component in the administration of justice. It aims to present a contextualised account of probation reports in criminal cases that will unravel and reveal the processes and strategies by which these documents are constituted and constructed. These processes occur at both an organisational and interactive level that, in turn, are historically located within and serve a broader systems context.

In order to understand the operational meanings and significance of this to probation practice and the broader administration of justice, the study is conducted from a grounded observational perspective. In adopting a qualitative approach it is my intention to acknowledge the complexities of report compilation, whereby formal and informal relations operate and collude to assign various participants central or peripheral roles in both the process and the final event. Whilst such an approach is generative, as opposed to theory testing, it takes place against and draws upon a background of considerable knowledge in this area that has produced a wealth of material relating to the role, content and impact of reports as well as to the historical and theoretical location and application of probation practice.

Official Accounts

Official accounts of social inquiry reports have emphasised, on one hand, features of reliability, comprehensiveness and objectivity in relation to the offender and, on the other, relevance, treatment and the needs of the individual and society. The Streatfield Report of 1961 acknowledged the relationship of reports to the widening range and changing objectives of sentencing strategies:

'In many cases, the court can still do little more than punish the offender for what he has done and in every sentence the offender's culpability has to be

taken into account. But in a considerable and growing number of cases the 'tariff' system can no longer be relied upon to fit all the considerations in the court's mind. The need to deter or reform the offender, the need to protect society and the need to deter potential offenders may in a particular case be conflicting considerations. This wider range of objectives naturally calls for different information' (p.77).

As such, the Streatfield Report stated that:

'The first function of a probation report is to provide information about the offender and his background which will help the court in determining the most suitable method of dealing with him' (para. 333).

The Report stated that the information should be comprehensive, reliable and relevant, with a view to helping the court to reach a better sentencing decision. Thus:

'Information should not be proliferated for information's sake. It is not simply a matter of providing the court with the fullest possible information about offenders ... irrelevant information is not only useless, but possibly harmful. There is a risk that it may cloud the issue before the court and induce a cosy feeling in which the absence of really useful information passes unnoticed. The test to be applied is whether the information can help the court reach a better sentencing decision' (para. 293).

References to the theoretical rationale for the structure and content of reports contained in the Streatfield Report continued to be employed in official guidance on report writing as late as 1983 (Home Office Circular 17/1983), by which time reports had become more focussed and targeted towards legislative changes implemented in the Criminal Justice Act, 1982, and, more recently, Home Office priorities relating to the familiar themes of effectiveness, relevance and economic distribution of resources within the Criminal Justice System.

The Criminal Justice Act, 1991, claims to:

'Bring into effect a new process by which a sentence of the court is carried out. This process starts with the Pre-sentence Report (PSR). Probation officers are the officers of the court who, as never before, statutorily have the central role throughout the whole of this process' (HO Guide, 1992, p.2).

The title 'pre-sentence', as opposed to 'social inquiry' report reflects a shift in sentencing strategies whereby the process by which sentence is decided and executed rests on the primary principle that:

'Sentences should reflect the seriousness of the offence(s) committed' (Ibid. p.3).

Although this claims to represent a shift in sentencing practices and philosophies, the function of the report as a sentencing aid and the role of the report writer in assisting the court to reach an 'appropriate' sentencing decision has remained relatively stable. But,

'the true nature of a SIR as a comprehensive and objective document prepared by the professionally trained social worker of the court' (Matheison and Walker, cited in Walker and Beaumont, 1981, p.15)

has not correlated with practice accounts nor been confirmed by research that has focussed on the content or impact of reports.

Practice Accounts

In a Home Office research study Davies and Knopf (1973) observed that probation reports generally took four and a half hours to compile, one third of that time being allocated to interviewing the offender. Interviews themselves were often conducted in 'disruptive circumstances', where the PO had to reach a judgement quickly and from

scratch whilst the offender was more preoccupied with the forthcoming court appearance than with the immediate situation. Thus, in practice, reports were:

'Often hasty judgements made under considerable pressure on the basis of inadequate information'.

Ironically, the official goal of comprehensiveness is further undermined by Home Office guide-lines as to the streamlining of reports to correlate with changing sentencing practices and philosophies (Bottoms, A.E. and Stelman, A., 1988). In practice this has produced reports that are:

'Short, rather than comprehensive, the official goal of comprehensiveness (being) limited by common consent between the courts and the probation service (whilst), in compiling reports, information is not randomly selected but targeted to shape a picture of the client that the report writer hopes to convey (and that is) aimed at justifying the sentence recommendation contained in the report' (Walker and Beaumont, 1981, p.18).

Content Analyses

Content analyses have largely focussed upon interrelated aspects of reports in relation to the construction of the offender and sentence recommendations. Rather than being comprehensive or objective, reports have been defined as 'idiosyncratic and selective' documents (Perry 1974) notable for their 'lack of information' (Martin, Fox and Murray, 1981) and lack of 'theoretical coherence' (Bean 1975). Thorpe's (1979) Home Office research study suggested that this subjectivity benefited probation clients in that reports tended to present offenders in a predominantly favourable light. Others have stated to the contrary, that offenders should 'choose their PO carefully' (Bean, 1975). In line with this are the observations drawn from a United States study conducted in 1965 (Wilkins and Chandler), in which a probation case history was subjected to content analysis and its contents classified under forty nine

headings, from which probation officers were asked to select, in a sequential manner, in order to form a basis for sentence recommendation:

'The result showed that the methods of gathering or utilising information had no consistent effect upon the type of decision reached, but were apparently more characteristic of the persons concerned in the operation' (Barbara Wootton, 1978, p.45).

If, as a more recent study concluded:

'Reports read either as rather bland descriptions ... expressed in neutral, non-committal language or, more frequently, as lay accounts of "good" or "bad" characters' (Curran and Chambers, 1982, p.100),

this might have more to do with the function of the report and the report writer's role than with the report writer's own preferences or abilities. Thus, Hardiker and Webb (1979), for example, stated in their analysis that:

'Given the legal and social work parameters which inform probation practice, we would say "choose your offence and your social problems"'.

Sentence Recommendations

The question of what influences sentence recommendations in probation reports has been addressed through a number of studies. Wilkins and Chandler's research, outlined above, has been criticised both for the artificiality of the method employed and, relatedly, for promoting an 'over-simplified approach to a complex subject' (Davies, 1974; Pearce and Wareham, 1977).

'By far the most important and influential work on the shaping of recommendations in social inquiry reports has been carried out by Pauline Hardiker (Hardiker 1975, 1977, 1979; Curnock and Hardiker 1979; Hardiker and Webb 1979).¹

Hardiker's suggestion that offenders should 'choose their offence and social problems carefully' revolves around 'tariff' and 'need'. According to her analyses, the balance of these elements are central to the report writer's world view. The major influence on decision making in relation to report writer's recommendations is therefore the context of the case as it relates to both the offence and offender and the report writer in the systems context so that:

'The sentencer through the medium of the social inquiry report determines where on continuum of tariff and social need the offender stands' (Hardiker 1979: 122-3)².

According to a 'reverse tariff rank', social need influences sentence where need is high but tariff is moderate or low.

Whilst this might explain variations in recommendations, the reverse tariff rank has been criticised as oversimplistic in that both tariff and need are relative concepts that reflect perhaps inconsistent perceptions between report writers and sentencers (Paley and Leeves, 1982; Stanley and Murphy, 1984). In contrast:

'Curran and Chamber's (1982:27) essay an interesting alteration to Hardiker's reverse tariff formulation. They note evidence in Perry (1974: 27) that in most cases the report writer recommends a lesser sentence than he anticipates the court will actually give. Perhaps, then, the report writer decides what sentence he thinks the court might pass and then (because of his commitment as a social worker to his client) usually - though not always - argues, on a social work basis, for a penalty that is just below that anticipated sentence level. This approach is described by Curran and Chambers "a pitch for a tariff minus one disposal" though one which, because of the social work skills which underlie it, is "not simply a plea for leniency" (1982: 144)'³

Curran and Chamber's work thus recognises that a relationship between sentencers and report writers might be an influential factor in sentence recommendations, and that the report writers role contains contradictory elements.

Sentencers Views

The question of how sentencers view probation reports has been given relatively scarce attention in research. From the data available it appears that both lay and professionally qualified sentencers express a predominantly favourable view of reports (Burney, 1979; Shapland, 1981; Curran and Chambers, 1982). Any criticisms seem to revolve around 'unrealistic' recommendations and the expression of the report writer's 'opinion' as opposed to her 'professional judgement' (Shapland, 1981). The study conducted by Curran and Chambers (1982) revealed that Sheriffs welcomed information in the report about the offenders attitude to the offence, but that they disapproved of social workers commenting on the circumstances of the offence. This, however, begs the question of what sentencers see as the purpose of the report and the role of the report writer.

Role and Function

Professional accounts suggest that reports are more than just a 'sentencing aid' but, rather, that they are a 'diagnostic' process allowing offenders to be matched to 'treatment'. This 'treatment' model has been criticised by the Home Office research unit (Brody, 1975) on the basis that most probation officers favour a pragmatic, common-sense approach. But whilst 'common-sense' is something that is held to be universally 'true', it amounts to the hierarchical construction of 'reality' (Worrall, 1990). Thus, if report writers favour a common-sense approach, we need to be sensitive to what this actually means and whose version of 'reality' it reflects because this, in turn, holds implications for the way in which reports function in the wider judicial arena.

Curran and Chambers (1982) analysed the content of 180 reports prepared for the Sheriff Courts in Scotland. Whilst their finding that the sample was value-laden was consistent with earlier studies, rather than being straightforwardly critical of this as bad practice they related this to the systems context of reports:

'Perhaps the point is, suggests Curran, that social enquiry reports are a different kind of document from that which many researchers have implicitly assumed; perhaps the content and shape of reports is powerfully influenced by what the report-writer thinks (a) is wanted by the court, and/or (b) may persuade the court towards a particular result. In short, perhaps SERs are strategic documents involved in "persuasive communication" with the courts (Curran and Chambers 1982: 100).⁴

The Effect of Reports

Quantitative research has shown a positive association between report recommendations and sentencing (Stafford and Hill, 1987). This might be due to what Parker et.al. (1981) referred to as an 'integral feedback loop', reinforcing and legitimating the sentencing predilections of the bench. Similarly, a recent study of magistrates at work in the juvenile court, Brown (1991), found that magistrates assessed recommendations on whether or not they converged with their own existing preferences.

This is endorsed by an obligation for the report writer to acknowledge sentencers' preliminary indications as to 'appropriate' sentence and through a concern to maintain credibility in the eyes of the court (Walker and Beaumont, 1981, p16). The cumulative effect might be to reverse the 'diagnosis then treatment' model (Cohen 1985). At the systems level this is especially important, since research has shown that defence solicitors are often reliant upon the report and contribute little, if any, independent mitigation-relevant information and this has implications for the wider administration of potential injustice (McConville et.al., 1994, p.206).

The Meanings Uncovered

The wealth of material relating to probation reports reflect a complex area of research studied through a variety of methods. Whilst content analyses demonstrate the disparities between official and practice accounts, the examination of reports as end products has shed little light upon the intricacies of report compilation or the contexts in which they are compiled. The question of what influences the content, especially sentence recommendations, of probation reports has revealed some important discoveries about the conceptual aspects of judgements and decisions but, because this has been addressed in a similarly artificially decontextualised manner, has said little about what these concepts mean, and how they are operationalised, in practice. What clearly emerges from the confusion is that the relationship between sentencer and report writer is an important factor in report compilation and effect.

Studies of sentencers views of reports have largely consisted of generalised, as opposed to case-specific, questionnaires that, whilst valuable to a broader understanding of the issues involved, also amount to an indirect observation of the processes at play. Quantitative techniques pertaining to a purely policy-orientated approach, have generally been employed to study the effect of reports but these have failed to disclose the mechanisms by, or context in, which disparity or convergence occurs.

The partiality of these approaches means that our knowledge of probation reports is somewhat piecemeal and ad hoc. This has been further reinforced by ahistorical approaches to this area of study, studies of a socio-historical nature having been conducted from a theoretical foundation and separately from empirical research (Foucault, 1977; Garland, 1985; Bochel, 1976).

The Report in Context

The application of the 'legal and social work parameters' which inform probation practice gave rise to fierce debate during the 1970s relating to the inherent degree of care or control that POs exercise in relation to their clients. Whilst too much emphasis on the similarities between probation practice and social work tends to detract from probation's connection to the legal system (Walker and Beaumont, 1981), social work history is:

'Littered with explanations of different cultures subject to assessment ... (Social inquiry reports) reflect a prevailing professional culture that, in the values and practices it espouses, perpetuate inequality ... and contribute to the broader administration of injustice' (Whitehouse, 1986).

As Whitehouse points out, the history and professional culture of report writers has rarely been the object of study. Located within the broader structural and historical roots of penal reform and philanthropy from which it emanates the professional culture of report writers contains a relationship with sentencers that is important both in relation to the information contained in reports and the way in which they are studied and, thus, holds both theoretical and methodological implications.

Firstly, the care-control model that has been applied to other areas of probation practice might not be conducive to probation reports in that it fails to look beyond the polar points of the dichotomy to the gradations of practice in between (Fielding, 1984, p.171), or to adequately embrace the relationship between report writer and sentencer. The empirical importance of this was revealed by Pearce and Wareham (1977), who suggested that POs adopt two operational definitions of their role in relation to report writing. 'Front region accounts' are presented to the court (and researchers) and 'back region accounts', where suppressed facts and informal rules emerge, within the organisational setting.

Secondly, both the report-writer/sentencer and report- writer/ client relationship emanate from and operate within an historical and systems context from which they have frequently been decontextualised and, thus, artificially studied.

Finally the offender, supposedly central to both the report and the process of which it is part, has largely been silent, if not absent, from analyses of probation reports and, as such, we have little knowledge of how she either understands or experiences it.

The aim of *this* thesis is to present a contextualised account of reports, which acknowledges the evolution of the role of the report writer and the function of the report and which unravels and reveals the *processes* of their application. Thus, this is not a documentary analysis of reports as 'end products', because such an approach fails to acknowledge the intricacies of relations that the report reflects or the contexts in which they occur. It is not an account of 'bad' probation practice, but an exploration of how the obligations and restraints of the probation officer's role inhibits alternative practice. It is not an explanation of why people commit crimes, but an analysis of how individual explanations of offending behaviour come to be reconstructed within the terms of reference and expectations of the criminal justice system. It is not a critique of sentencing practices, so much as an examination of the ways in which the report comes to reflect sentencing philosophies and communicate them into practice.

A key question of the study is the extent to which different parties in the process are able to actively contribute to the end product. Not least because what people *say* they do is not necessarily *what* they do, this study was conducted from the grounded perspective of direct observation. In adopting a qualitative approach it was my intention to acknowledge the complexities of report compilation whereby formal and informal relations operate and collude to assign participants in the process central or peripheral roles in the final event.

Whilst such an approach is theory generating, as opposed to theory testing, I have drawn upon the theoretical persuasions of historical, structural and discourse analysis

in an attempt to do justice to the systems, organisational and interactive contexts in which processes and events take place.

Thesis Structure

Chapter two of this thesis is concerned to define and locate the role of the report writer and the function of the social inquiry/pre-sentence report. It charts the development of the probation system and its structural and ideological foundations. The impact of these on the theoretical and operational role of probation practice are explored more fully in chapter three. The study itself develops from these historical and theoretical foundations.

Chapter four outlines the methodological aspects of the study. Rather than being concerned solely with which research methods were employed and the implications of this to data collection and analysis, it is also an account of how the study evolved and was executed. Given the purpose of the thesis, this chapter necessarily includes a section on what it means, in practice, to be involved in post-graduate study that I hope will prove educational to other students who may follow this course.

The empirical data forms the basis of the following three chapters which, in attempting to describe and analyse how reports are constituted and constructed, necessarily includes observations of and interviews with all of the parties - offenders, probation officers, sentencers, and other court personnel - involved in the process of social inquiry and the final event. Chapter eight is reserved for an overall summary of the literature and empirical data from which concluding remarks are drawn.

REFERENCES

- ¹ Bottoms, A. and McWilliams, W. 'Social Inquiry Reports Twenty Five Years After the Streatfield Report' in Bean, P. and Whytes, D. (Eds.), 'Barbara Wootton: Essays In Her Honour, 1986, p.261
- ² Ibid. p.263
- ³ Ibid. p.267
- ⁴ Ibid. p.260

Chapter Two

The Evolution of Role and Function

The requirement of probation officers to

'enquire in accordance with the directions of the court into the circumstances or home surroundings of any person with a view to assist the court in determining the most suitable method of dealing with his case' (Jarvis, 1987, p.91)

confirms the functions which probation officers have had since the earliest days of the Service. It embodies the traditional role of the probation officer (PO) as an officer of the court and identifies the function of the social inquiry report (SIR) as a sentencing aid.

This chapter will chart the evolution of role and function within the broader historical context of changes in the legal framework of sentencing strategies from which they emerged.

Existing Sanctions and the Search for Alternatives

The formation of a probation system in England and Wales represented a relatively late development in penal reform. Whilst

'the legislative framework of the sentencing process began to assume its modern form in the middle of the nineteenth century, it was not until the early twentieth century that there began a process of the diversification of the objectives of sentencing' (Thomas, D.A., 1979, p.6).

Growing concerns about imprisoning children and doubts relating to the economic value and objective effectiveness of imprisonment *per se* reflected, in part, changing social attitudes influenced by positivist theories of crime that located deviant behaviour within the biological characteristics of the individual and, thus, saw punishment in terms of reformation. These changing objectives challenged the deterrent value of incarceration and called for alternative measures.

The search for alternatives involved the imaginative and unconventional use of provisions that already existed within the framework of sentencing policies, but which lacked any effective machinery for the supervision of offenders within the community.

In relation to juveniles, school as an alternative was sanctioned by Parliament in the Reformatory Schools (Youthful Offenders) Act, 1854. The power to detain

'any person under the age of sixteen years convicted of any offence punishable by law, for a period not less than two years and not exceeding five years'

under section sixteen of the Act served to separate child from adult offenders, but failed to offer an alternative to incarceration. Moreover, the minimum two year committal period proved too severe in some instances - especially in the cases of first offenders who, rather than progressing up the sentencing tariff, were subjected to severe penalties from the outset. It was also feared that reformatory schools, like prisons, would prove both expensive and ineffective in terms of reformation in that, like penal institutions, the schools had their own inherent characteristics of 'contamination' and 'stigmatisation' that were perceived to be reproductive of criminality.

The Howard Association, one of the many societies born of the humanitarian movement of the day, drew attention to imprisonment, of children in particular, as a practice which

'corrupts and brands victims of privation and parental neglect' (cited in Bochel,D.,1976, p.2).

Whilst the humanitarian movement was attacked by others as 'sentimentalist'¹, the problem of what to do with young offenders stubbornly remained. In spite of a strong aversion to imprisoning young people, the only available alternatives were:

'... the fine, which punished all the family and not only the culprit (and was, no doubt, beyond the means of most offenders' families at that time, resulting only in imprisonment for non-payment); dismissal with a reprimand, which seemed insufficient to impress the offender; and a recognizance to come up for judgment

when called upon, together with the threat of severe punishment for any further offence'.²

A further alternative to imprisonment was contained in the provisions of the Summary Jurisdiction Act, 1879. In accordance with the Act instalment fines and fines in lieu of imprisonment (s.7), together with powers to discharge defendants via dismissal or subject to conditions of recognizance (s.16) and the device of bail (s. 17; s.38) permitted sentencers to defer or suspend punishment. Although these practices foreshadowed a probation system, they also lacked the essential element of supervision in the community.

A considerable advance in this direction came from a refinement of the practice, widely employed by magistrates in Warwickshire, of committing youths to the care of employers or 'guardians'.

'Considering imprisonment distasteful and ineffective and reprimands insufficient, upon coming across a willing and apparently suitable employer they would commit the youth to his care. They do not appear to have made any use of recognizances or bail in these cases and there was no sanction such as the possibility of recall or the forfeiting of sureties' (Bochel, D., 1976, p.4).

It is unclear what legal sanctions were either available or employed in these circumstances and, having no recourse to legal redress, cases of 'breach' could not be addressed.

A definite shift towards supervision in the community, rather than a 'token' punishment without recourse to the courts, was instigated by Edward Cox, Recorder of Portsmouth and Chairman of the Second Court of Middlesex Sessions, who is said to have experimented during the period of supervision between conviction and sentence by appointing a special 'enquiry officer' to supervise the offenders' behaviour. This was consistent with the practices of some other magistrates, who called upon the services of missionaries, employed by the Church of England Temperance Society, to provide informal supervision of some offenders and, in some instances, report back to the court on their conduct (Bochel, D., 1976, p.6).

Although closely related to the development of a probation system, there is no directly traceable link between these various developments in the nineteenth century and the formation of an official system of probation in England in 1907. A more direct connection is evident between early experiment and official action in the development of probation in the State of Massachusetts and it is to this, American, example that the introduction in *this* country of a probation system can be most directly traced (Bochel, D., 1976, P.6).

As in England, the use of bail to delay sentence was being increasingly used by the Judiciary in America. John Augustus, a cobbler in Massachusetts, stood bail for offenders appearing before the Boston courts and undertook their supervision between conviction and sentence, submitting a report on their general conduct which the court took into account at eventual disposal.

After Augustus's death, in 1859, this work was carried out by volunteers until, in 1869, the state provided for the statutory appointment of an 'agent of the Board of State Charities', whose responsibilities included the supervision of probationers, thus providing the, until then, missing element of direct control. This, together with the courts' use of suspended sentencing, recall to the court, careful record-keeping and reporting on the offender, laid the structural foundations of modern probation systems.

The Parliamentary Debate

Influenced by these experiments in America, similar developments in England initially fell upon stony ground. Although the Liberal government of 1880 lent a sympathetic ear to the voices of penal reformers, the question of probation subsided beneath other concerns of the day (not least, the question of Home Rule for Ireland), whilst a perceived 'decline in crime' reduced the incentive to take action. Then, in 1886, Colonel C.E. Howard Vincent, former director of criminal investigations at Scotland Yard, now the elected M.P. for Sheffield, presented a Bill on his return from a visit to Massachusetts, proposing that first offenders be subject to police supervision in the community under the Prevention of Crime Acts 1871 and 1879.

Convinced of the importance of supervision, as opposed to dismissal under the Summary Jurisdiction Act of 1879³, Vincent assured the House of Commons that the Bill was not in the spirit of sentimentalist philanthropy to hardened criminals, but was specifically aimed at minor first offenders. Adopting the continuous theme of reformers, he stressed the financial savings to be made in decreasing the prison population, along with the benefits to be reaped from the segregation and reform of criminals. For their part, however, the police were not enthusiastic about having their duties and responsibilities extended, nor conducive to reform - regarding what they perceived as 'ticket of leave' more stigmatising than a custodial sentence.

In the event, the Bill was thrown out of the House of Commons, in spite of support from the Earl of Belmore who, like Vincent, pointed to the success of the probation system in Massachusetts. The Bill was reintroduced into the House of Lords in January, 1887, but replaced by a similar one brought in by the Earle of Erne - only to be withdrawn by an amended version that Vincent had, meantime, introduced to the Commons. Vincent had now made the concession that first-time offenders would be released upon condition of 'good conduct', rather than under police supervision.

At the second reading, on February 18, 1887, the Probation of First Offenders Bill received cautious support. Although most members were in agreement that first offenders should not, in many cases, be sent to prison, the idea of probation as either an alternative or a need was subjected to various criticisms. Thus, Mr. Addison (Ashton-Under-Lyne), in rising to move the second reading of the Bill, saw its purpose as

'to do away with an inconvenience which those who have to administer justice sometimes feel, when they have brought before them persons accused of offences for the first time, and against whom the offences are proved, thus making him or her one of the criminal classes, and subjecting him or her to the contamination of the prison surroundings. This modest Bill merely proposes to give magistrates the power - not to compel them - when a person is brought before them for the first time charged with an

offence punishable by imprisonment only, to direct that he shall be conditionally released upon probation of good conduct'.⁴

Other speakers expressed their observations relating to the prevention of crime and safeguarding the community. In this vein, Mr. Bradlaugh (Northampton), supporting the second reading, stated that:

'The object of all legislation in relation to crime should be to prevent future crime, not merely to inflict punitive vengeance. The efforts already made in the direction of reformation have diminished crime. I believe this Bill will protect people from being permanently criminal'.⁵

Mr. Sclater-Booth (Hants, Basingstoke) expressed the opinion that he did not think that there was the 'danger that used to be apprehended of the people whom the Bill would benefit being at large, but the Secretary of State for the Home Department, Mr. Mathews (Birmingham), held reservations about what probation would actually mean in terms of punishment - viewing it not, as we might expect, in terms of a 'soft option', but as too harsh a penalty for first-time offenders and an unnecessary addition to, what he perceived as, an already adequate legal framework:

'I must admit I have had some difficulty in understanding what the objects of the framers of this Bill are ... my honourable and learned friend (Mr. Addison) must be aware that by the Summary Jurisdiction Act 1879, all courts of summary jurisdiction may now, without proceeding to a conviction, dismiss any information which is laid before them and order the person charged to pay damages and costs ... furthermore, to discharge. The intention enabling the court to avoid sending a first offender to prison is a good one. I believe that by the Act of 1879 the power in question was given to the courts of summary jurisdiction, therefore the objects that are sought by this Bill are perfectly capable of attainment by the law as it stands'.⁶

Turning to the provisions of the Prevention of Crime Acts 1871 and 1879, Mr. Mathews continued:

'I do not know whether the House realises how extremely penal these Acts are. Under these Acts convicts, or habitual offenders, are subjected to police supervision which involves penalties of a penal character. A person is required to report his residence periodically and, if he fails to report, he is liable to a years imprisonment, which is probably a much longer period than that by which his offence is punishable. If a licensee associates with bad characters - a rather elastic phrase - he is liable, under the Prevention of Crime Acts - to three months with hard labour. Then, again, if the person subject to the police supervision has no possible means of obtaining an honest livelihood, which is a fate not uncommon in many classes of society, he is likely to be brought up and sentenced to three months imprisonment. I really do submit to my honourable and learned friend that the police supervision to which he proposes to subject first offenders is unnecessary, harsh and severe. I imagine it is the desire of the framers of this Bill to have some treatment intermediary between sending a first offender to prison and letting him go scot-free ... if the Bill could be modified to bring about that end, I should heartily welcome it'.⁷

In response, Vincent rose to defend the Bill on humanitarian grounds, appealing, in the process, to a sense of nationalism:

'The desire of the framers of this Bill is to endeavour to do something to prevent first offenders being turned, by imprisonment, into habitual criminals; to endeavour to do something to convert those who have committed a first offence into honest men and useful members of society ... a measure of this kind has worked for many years in Massachusetts. It is no new experiment which we are seeking to introduce. What we propose has worked among our own race, and under a similar system of jurisprudence to our own. I am perfectly certain that this Bill will have a very great tendency to

reduce crime and reduce the expense incurred in the maintenance of criminals in this country'.⁸

But, the seeds of doubt already sown, the Bill came under opposition from Mr. E. Harrington (Kerry, W.):

'I am sure that this House joins with the honourable and learned gentlemen opposite (Mr. Addison) in his spirit of leniency to first offenders. But I think, with all sincerity and seriousness, that it is hardly possible to make a rule that first offenders should get off scot-free and, further, I am of the opinion that it might happen that magistrates in Ireland would avail themselves of the Bill in order to liberate some of their friends who ought, for first offences committed by them, to be sent to prison'.⁹

Incorporating some of the criticisms into an amended version of the Bill, Vincent proposed to include more guidance to the courts as to its application, references to the age and character of the offender, and the introduction of conditions which the offender should observe. In addition, 'supervision' (under the Crime Prevention Acts) was substituted with some 'authority', whose duty it was to report to the court on the offender's behaviour or breach and, in such instances, to assist the court in bringing the offender to justice. Vincent suggested that the 'authority' might be members of the Discharged Prisoners Aid Society, clergymen, or police superintendents.

The Bill passed through the Commons, but the Lords again suggested that it required further amendment. As a result, 'authority' - and, along with it, the principle of supervision - was dropped. The resulting Probation of First Offenders Act, 1887, permitted the conditional release of first offenders in certain cases, having regard to:

'... the youth, character and antecedents of the offender, to the trivial nature of the offence, and to any extenuating circumstances under which the offence was committed'.¹⁰

The 1887 Act acknowledged the desire to be lenient in the case of first-offenders but, in failing to provide for the supervision of those offenders in the community, failed to respond to the wishes of reformers. For whilst the Act had a probation *form*, it lacked any institutional structure or support. Consequently, a probation system was not established at that time, because no provision was made for the release of offenders on supervision. In that it added nothing to existing measures, it is hardly surprising that the 1887 Act was never widely employed.

As the 1887 Act failed to offer any alternative solution, the same problems continued to dominate the campaigns of reformers, who persisted in citing the Massachusetts system of probation as a preventative and cost-effective measure compared to the institutional treatment of offenders in prison or reformatory schools. In a report to the Home Office in 1898, Evelyn Ruggles-Brise, Chairman of the Prison Commissioners, pointed to the lack of supervision in the 1887 Act compared to the American system, which he had witnessed first hand whilst visiting there. His views were echoed by Rosa Barrett in her Howard Medal prize-winning essay, written in 1890.¹¹ She pointed out that the proper application of the 1887 Act obviously required preliminary enquiries into the character and circumstances of the offender, yet the machinery for making these was entirely missing (Bochel, 1976).

Although Ruggles-Brise doubted whether the public in England would tolerate the preliminary 'inquisition' of untried prisoners and, unlike others, saw the probation system as expensive, he gave a favourable response when the Home Office, in 1903, asked him to comment on a proposal to introduce a similar system in England.

Offering his own suggestions for legislation, Ruggles-Brise sought to provide for the appointment of probation officers to avoid any rivalry between already existing personnel. In response, the Home Office sought more information on probation systems operating in New Zealand and Australia and passed this to Ruggles-Brise for comment.

At the same time, a relatively new organisation, the Committee on Wage Earning Children, who had chaired a conference of philanthropic societies concerned with the welfare of

children, were applying pressure to the government to introduce children's courts staffed by probation officers. At the Society's encouragement, local authorities sent letters to the Home Office calling for the necessary legislation. In response, the Home Office requested views from magistrates on the subject and their replies, in turn, were

'pretty conclusive against the provision of courts for children in London and, although one or two mentioned the work of the police court missionaries, none suggested the employment of probation officers' (Bochel, D., 1976, p.20).

These views were supported by Curtis Bennett, a Metropolitan magistrate, who had been asked by the Home Office to comment upon the system of children's courts and the system of probation that operated in America. Bennett considered that, through the use of police court missionaries and School Board Officers, the Metropolitan police court district already enjoyed the benefits of a probation system.

The reinstatement of a Liberal government, following Balfour's resignation in 1905, brought the appointments of Herbert Gladstone and Herbert Samuel as Home and Under-Secretary of State. Following in the footsteps of his father, Gladstone was keen to implement change in penal policy which would espouse reformation as one of the objectives of incarceration. Samuel, meantime, received a file from the Permanent Under-Secretary, C.E. Troup, about how probation might be organised. Consequently, probation was listed as top of the agenda at a Departmental meeting to discuss legislation.

The principle of supervision had been formally reintroduced by Vincent in support of the Tennants Bill, 1905, which proposed separate courts for children along with the proposal that the courts should have power to release young offenders for a period of supervision under 'such authority as the courts may direct'. Whilst the Home Office was now forced to acknowledge a strong case for probation, and the need for more effective machinery to operationalise it that the 1887 Act had allowed, the Tennant Bill, which re-appeared in 1906, never got a second reading and was superseded by Vincent's Probation of Offenders Bill, 1906.

At the second reading of the Bill in the Commons, Samuel pointed out that it was:

'desired by reformers of our penal system throughout the country'.¹²

By this time seen as non-controversial, in that it embodied existing provisions contained in the 1887 Act, Parliamentary debates, rather than opposing the Bill, reflected the confusion and conflict surrounding the appointment of salaried probation officers and their proposed allocated duties.

Mr. Cave (Surrey, Kingston) agreed that:

'So far as this Bill re-enacted some of the provisions of the 1887 Act he had nothing to say against it. But he found it difficult to understand exactly what the powers and duties of the probation officers would be. He knew of very many cases where the assistance of police court missionaries had been the saving of prisoners released under the First Offenders Act and he wanted an assurance that there would be no objection to their appointment to the position of probation officers'.¹³

In spite of the long period of discussion and campaigning prior to the Bill, Mr. Cochrane (Ayrshire) stated that:

'The Bill had come forward somewhat unexpectedly'.

Whilst he welcomed the principles of humaneness it espoused, he expressed concern that supervision could hinder reform:

'Much harm might be done to a young offender under this Bill if he were pursued about the country by a probation officer, anxious to guide, admonish and befriend him'.¹⁴

Reminding the Under-Secretary that, as the Bill stood, a probation officer might be a police constable, he suggested that the Bill should be carefully amended to ensure that probation

officers were carefully selected to include the appointment of women in relation to children or female offenders.

On a more optimistic note, Mr. Pickersgill (Bethnall Green) pointed out that:

'the Bill would be welcomed by a large body of public opinion in this country. This system of probation had been for many years in active operation in the United States and in some of our colonies, and he believed it had had excellent results. In our own country, also, the Bill had already been to some extent carried out, because the court missionaries had largely performed the duties which it was the object of the Bill to regularise'.¹⁵

Returning to the question of duties and obligations, the next speaker, Mr. Stuart Worthy (Sheffield),

'wished to reinforce to some extent the doubts as to what were to be the duties and, still more important, the obligations of this entirely new class of persons under the name of probation officers. What deduction was to be made from the liberty of the person under the control of the probation officer? A new kind of quasi-criminal relation was being created. Would the probation officers have the right of entry into a persons house and, if not, why not? Was the officer to have the right of following a person about the country? He did not attach much importance to figures for Massachusetts, because no-one would deny that in this country there had always been greater solicitude about the liberty of the subject than was the case in other countries'.¹⁶

Wishing well to the Bill, he concluded by stating that he thought it only right to draw attention to the 'imperfect way' some of its provisions had been drawn up.

Along similar lines, Mr. Rawlinson also wished to know what the powers of the newly-created probation officers would be. He had no particular objection to the Bill if it was merely a benevolent measure to provide and pay somebody like the police court missionaries.

with no legal powers, to look after the offender, but before he assented to a new class of officials he would like to know what their powers would be.¹⁷

At the committee stage, any attempts to amend the power and discretion of the *courts* to appoint probation officers were either withdrawn or defeated, amendments introduced at that stage being concerned with conditions attached to probation orders and a more specific description of the probation officer's role.

The Formal Inauguration of Role and Function

The Probation of Offenders Act, 1907, laid the statutory basis of a system, then, which represents a relatively late development in penal reform. The purpose of the Act was to:

'enable courts of justice to appoint probation officers, and pay them salaries or fees, so that certain offenders whom the court did not think fit to imprison on account of their age, character, or antecedents, might be placed on probation under the supervision of these officers, whose duty it would be to guide, admonish and befriend them'.¹⁸

In consolidating the law relating to methods of disposal, the 1907 Act repealed the whole of the Probation of First Offenders Act, 1887, s.16 of the Summary Jurisdiction Act, 1879, and s.12 of the Youthful Offenders Act, 1901.

But the formal inauguration of a system which properly allowed for the practice of supervision of offenders in the community - without bias in relation to their status of maturity or sequence of offending - failed in itself to immediately resolve the considerable conflict that still remained regarding the appointment of probation officers.

The Church of England Temperance Society strongly urged the appointment of police court missionaries - personnel employed by the Church of England Temperance Society to promote, initially among soldiers, sailors and railwaymen, 'habits of temperance'. At the suggestion of Frederick Rainer, the missionaries extended their activities to the courts in 1876, where they were principally engaged in visiting and working with drunken offenders.

with a view to their restoration. Gradually, magistrates came to employ the missionaries in a variety of 'problem' cases, so that their role extended, although they were still dependent for their livelihood upon the mission to which they were attached and, having no formal obligation, were not, in an official sense, agents of the court. Nor did they compile reports or follow up cases in the way that probation officers abroad did.

Although sometimes viewed as the forerunner of the probation officer, the police court missionary offered no real substitute for the role of probation officer and may even have presented a barrier to the formation of a probation system during the nineteenth century. Similarly, whilst merging with the movement advocating children's courts may have added impetus to the movement for a probation system, it also possibly detracted from the realisation that probation was a method of disposal applicable to adults as well as children (Bochel,D., 1976, p.17).

Magistrates feared that the missionaries would be unable to provide intensive supervision and, for their part, advocated the employment of retired police officers (as in New York's probation system). This suggestion met with the opposition of the Commissioner of the Metropolitan Police, who thought that the presence of ex-police officers would be resented by probationers and suggested, as an alternative, that probation officers be recruited from the ranks of the welfare workers of the Charity Organisation Society.

Under the Probation of Offenders Act, 1907, the role of the probation officer became, subject to the discretion of the court:

- a) to visit or receive reports from the person under supervision.
- b) to see that he observes the conditions of his recognizance.
- c) to advise, assist and befriend him and, when necessary, to endeavour to find him suitable employment.¹⁹

These duties long remained the basis of their work.

Change and Continuity

During the formative period, the 'need' for a probation system had been measured by and created from perceived gaps in existing measures which occurred as the result of an absence of alternatives to, and disillusionment with, the penal system on one hand, and the desires of penal reformers and philanthropists, on the other, to adopt a more humane approach - particularly in the case of children. This 'need' was rationalised in both social and economic terms - the stabilising effects of supervision on the community being measured against the cost and effectiveness of incarceration - that came to echo the political desires of a growing body of public opinion:

'There can be no doubt whatever that this Bill will prevent crime, and to a large extent empty our jails. If the government were to devote themselves to small and useful and non-contentious measures like this, they would add greatly to the happiness of the great mass of the people'.²⁰

Whilst the 1907 Act, nor any of its successors has managed to 'empty our jails', it both represented and reflected a significant shift in penal reform. The bringing together of all provisions, with or without supervision, for the dismissal of offenders was later to give rise to misapprehension about the nature of probation, which came to be seen as the 'soft' side of sentencing strategies in a system where newly formed non-custodial sentences, together with an increasing range of custodial measures, gave rise to two 'distinct' forms of disposal.

'The sentencer is presented with a choice - he may impose, usually in the name of deterrence, a sentence to reflect the offender's culpability, or he may seek to influence his future behaviour by subjecting him to an appropriate measure of supervision, treatment, or preventive confinement' (Thomas, D.A., 1979, p.8).

A concern for the welfare of the individual offender against the protection of the wider community, and the associated conditions of reporting and leading an industrial life, have been incorporated into the role of the probation officer as the supervisor of community

sentences. This role incorporates elements of care and control that are the result of a shared history of punishment and welfare. Reconciling or maintaining a balance between these, apparently conflictual, elements of role in relation to the supervision of offenders has been an ongoing issue that the probation service and its individual officers have inherited. But this role also has to be balanced against the role of the probation officer as an officer of the court.

Trends to incorporate and enact powers to deal with the offender as an individual, as opposed to following the punitive approach implicit in the nineteenth century, necessarily incorporated a demand to have knowledge of the individual in order to arrive at the 'appropriate' sentencing decision. Probation reports, as the vehicle through which to obtain these disposals, have also traditionally served as the medium of communication between the Service and the courts. Thus, they are also the means by which report writers account for and assert themselves in the systems context in which they operate.

The role of the PO as report writer and the function of the report as a sentencing aid have evolved in relation to the requirements of the judicial system that they serve. These historical and political foundations of role and function are significant to contemporary probation practice. A retention of the deferential and quasi-legal status of report writers in relation to the court has operational implications for both role and function and for the administration of justice.

In mapping out the circumstances of individuals in order to assess 'need' and prescribe 'treatment' in a systematic manner, SIRs came to reflect an image of the offender, consistent with early parliamentary debates, as a separate class or category of person. These images reflect a relationship to the ideological and instrumental links with the penal system and philanthropy, as well as report writers' structural location. Both intimately connected with and ambiguously situated along a care-control continuum, these links are more fully explored in the following chapter.

REFERENCES

- 1 Edward Cox, 'The principles of punishment as Applied in the Administration of the Criminal Law by Judges and Magistrates', 1877, cited in Bochel, D., 1976, p.5
- 2 Edward Cox, Recorder of Portsmouth, cited in Bochel, D. 1976, P.3.
- 3 The Summary Jurisdiction Act, 1879, gave courts the power to dismiss any information and order the defendant to pay damages and costs if 'upon the hearing of a charge .. the court think that though the charge is proved the offence was in the particular case of so trifling a nature that it is inexpedient to inflict a punishment, or any other than a nominal punishment' (s. 16).
- 4 Hansard, 18/2/1887, p.115.
- 5 Ibid. p.115/6.
- 6 Ibid.
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Chapter Three

Punishment and Welfare

'For much of this century two distinct strands have been discernible in the criminal justice system ... The notion of punishment, incorporating retribution, deterrence and rehabilitation, provides one and welfare the other. The relationship between these conflicting strands has been continually renegotiated through successive pieces of legislation; at certain times the social and political climate has brought one to the fore, then the other, and so on' (Parker et.al., 1989, p.4).

This chapter will chart the parallel development of punishment and welfare and the associated transition from philanthropy to professionalism. It will examine the significance of these historical developments to the structural location of the probation service and the ideological and instrumental dimensions of probation practice.

The Historical Development of Punishment

As we saw in the preceding chapter, the formation of a probation system has historically arisen from the desire, on one hand, and the perceived economic necessity, on the other, to provide 'alternatives' to incarceration. But both the nature and location of this 'alternative' as a 'soft' disposal has been challenged by structural analyses that locate it within the political and ideological context of sentencing strategies. This section will examine structural analyses of penalty and sentencing strategies and the related theoretical location of probation as a disposal.

Foucault (1979) charts the development of the birth of the prison and technologies of punishment in terms of 'economies of power' relating to modes of production. The carceral system of punishment, dominant in the nineteenth century, differed from its predecessors in that it represented not only the institutionalisation of the power to punish, but also a specific

technology of that power in the form of discipline. As such, the move from Sovereign to public powers of punishment not only reflected a change in the *power* to punish, but also a shift in the *mechanics* of example and deterrence which, Foucault suggests, laid the foundation of modern penality.

Rather than the ritualistic practices of the scaffold, punishment became a technique of punitive signs, codified as laws, which broadly related to 'common truths'. This transition from torture and death as a means of punishment, to the development of and demands for a more lenient system, was characterised by a strategy which aimed to combine 'measure' and 'humanity', and occurred both in the context of and as a response to several underlying processes related to the development of capitalism:

'The shift from a criminality of blood to a criminality of fraud forms part of a whole complex mechanism, embracing the development of production; the increase of wealth; a higher judicial and moral value placed on property relations; stricter methods of surveillance; a tighter partitioning of the population; more efficient techniques of locating and obtaining information ... the shift in illegal practices is correlative with an extension and refinement of punitive practices' (Foucault, M., 1979, p.77).

Penal popularity flourished, alongside the development of schools and factories, at a time when a growing demand for a disciplined workforce, combined with the notion that 'idleness' lay at the root of criminality, made the principles of work and correction an appealing means of dealing with offenders. Although initially criticised by reformers as too secretive, expensive and reproductive of criminality, it became widely accepted that the prison, as opposed to the 'punitive city', could contain and control the criminal classes whilst, at the same time, exposing them to observation and instilling in them the values of self-help and work.

Practices of 'hard labour', segregation and isolation allayed initial concerns regarding cost and effectiveness as the prison, apparently, simultaneously created a new workforce and forced individuals to reflect upon their crimes.

'But no doubt the most important thing was that this control and transformation of behaviour were accompanied, both as a condition and as a consequence, by a development of knowledge of individuals' (Foucault, M., 1979, p.125).

Through the formation of reports and records prison became an 'apparatus of knowledge', which served to produce 'reality'. Foucault accredits the success of the prison to its power-knowledge base, firmly rooted in specific mechanisms and strategies. He predicted that, with the growth of other mechanisms and disciplinary networks, the prison would become redundant and disappear from the social landscape.

Foucault's work suggests that the birth of the prison represented a transformation of the punitive system in that it addressed criminality on an individual level with an aim to both reform and punish deviants through surveillance and discipline. Many of the concerns that were voiced regarding the cost and effectiveness of the prison - secrecy, expense, reproduction of criminality - were, as we have seen, echoed by penal reformers in their later campaigns to introduce and implement alternatives to incarceration.

Although Foucault's prediction that the prison would disappear from the social landscape as other mechanisms of organisation and disciplinary networks emerged has not been realised, his work has influenced other analyses which propose that 'alternatives' are, in any case, merely 'supplements', amounting to an extension of discipline (Cohen, S., 1985; Vass, A., 1990). Whilst these explanations tend to undermine Foucault's prediction that incarceration would become redundant, they support the foundational premise that, because it contained the basic elements of reform and normalisation, the carceral system dominant in the nineteenth century laid the foundation for and is characteristic of modern penality. Garland (1985), however, sees Foucault's analysis as fundamentally flawed.

In Garland's view, prison 'popularity' was the result of struggles between competing influences. He suggests that, by 1865, State victory over power struggles between central and local control brought about the centralisation and bureaucratisation of prisons, bringing with it the birth of a uniform system of punishment alluding to definite conceptions of the State and State power.

Reflecting and reinforcing a classical theory of jurisprudence that, in turn, supported the prevailing ideology of laissez-faire, all legal subjects at that time were perceived as equals - the only difference between criminals and non-criminals, therefore, being the criminal acts that had been committed. It followed that the focus of punishment should be the criminal *act*, itself defined in relation to a contractual agreement between the equal partners of State and individual, which the latter had breached by his own actions. Within this context of self-help and self-destiny, punishment was:

'... an exclusively *legal* event - crime, causes, punishment, were all established and understood within categories of law - reality was determined by *legal discourse*, that saw all individuals as free, legal, subjects - responsible for their own actions and judged accordingly - because any knowledge which challenged this was ruled out' (Garland, D., 1985, p.18).

Consequently, *within* the prison walls, a uniform system of punishment, defined by and directed at the criminal *act*, amounted to a purely punitive doctrine which, in segregating inmates, recognised individuals only according to the crimes they had committed, but failed to recognise or acknowledge individuality, so that:

'Although the prison as an apparatus of penalty has always offered a potential space for reform and transformative practices, the constraints of legal principle and political ideology denied any serious development of this potential throughout the nineteenth century' (Garland, D., 1985, p. 31/2).

In contrast, the modern penal complex, which Garland locates between 1895 and 1914, was characterised not by the prison regime of the nineteenth century, as Foucault suggests, but by an expansion and diversification of sanctions accompanied by the creation of a number of new agencies.

The introduction of probation, Borstal training, instalment payment of fines and licensing, along with the abolishment of penal servitude for children, each contributed to and 'substantially altered the field of penalty and its functioning'. Whilst prison continued to increase its population of criminal recidivists and continued to 'operate the traditional objectives of security, uniformity, obedience', other agencies displayed, in addition, particularised objectives aimed at the moral or physical reform of the individual and involving the assessment and classification of offenders in order that they could be matched to treatment.

An essential part of this process of 'modern penalty' was the process of inquiry into the background and nature of the offender. This led to competing discourses, embracing the fields of sociology and psychology, as opposed to the exclusively penal discourse that had been the feature of Victorian penalty. Moreover, the move from a 'calibrated, hierarchical structure' of punishment, to an 'extended grid of non-equivalent and diverse dispositions' resulted in a shift in the centre of penalty, so that the prison became marginalised, reflecting a re-prioritisation of the aims of the system as a whole:

"'Deterrence' and 'retribution' continued to be presented as proper goals of the system whenever the official aims of the system were rehearsed ... however, the moral sentiment which had underpinned these terms in the Victorian system were now quite foreign to the realms of penal representation ... punitive or deterrent measures appear as last resorts ... 'reform', on the other hand, moved from being a subsidiary term in a series of aims, to become the central and dominant signifier in the new penal discourse" (Garland, D., 1985, p.5).

Just as Victorian penalty had reflected an image of the Liberal State, modern penalty evolved in the image of the welfare state, whereby the offender, rather than being perceived as an equal subject in law who had breached a social contract between equal partners was, instead, reconstructed and categorised as an individual in a society, based on accepted norms, who was in need of reformation.

As such, the transition from Victorian to modern penalty amounts, in Garland's view, to a move from *individualism* to *individualisation*. Whilst modern penalty contained elements of the old system, it therefore amounted to a new structure of penalty in that it displayed a

'distinctive pattern of sanctions, strategies and representations which ranged across an altered and extended domain. In particular, it involved a new logic of "penal-welfare"'(Garland, D., 1985, p. 5).

Probation, with its associated conditions of reporting, surveillance and regular employment, appears to aim to produce reformatory effects in terms of moral welfare as opposed to, for example, the physical training of Borstal. As such, probation as a disposal would seem to be properly located at the welfare side of the penal-welfare equation. Introduced as an alternative to prison, one of the main objectives of the probation system has been concerned with the transformation of the offender. As we have seen, this and other objectives have formed part of a range of strategies within a broader system of penalty, itself located within a wider political domain.

It has been suggested that, within this broader framework, prison has become of decreasing importance. But the so-called 'soft side' of penal measures, by virtue of the fact that they are presented as alternatives to incarceration, in turn legitimate the harsh side of penal sanctions. This not only calls into question the strategic position of the prison, which remains the point of reference on this landscape, but also the location of alternatives situated along the care-control continuum. But whilst probation as a sentencing strategy can be directly linked to penal reform, both the ideological and instrumental dimension of probation practice can be traced to ties with the Charity Organisation Society of the nineteenth century.

The Philanthropic Heritage

Changes in modes of and relations to production during the nineteenth century not only produced a segregation of classes, but also an increase in poverty that reflected, in part, cyclical tendencies in patterns of employment. In spite of these economic 'booms' and 'slumps', poor relief was administered according to underlying assumptions of 'idleness' and 'deservedness'. Guardians, empowered by the State, dealt with the destitute through the application of the Poor Law and the workhouse test but, alongside these devices, a number of charitable organisations also sprang up.

Philanthropists set themselves the task of administering relief in a way that would simultaneously encourage self-help and prevent abuse of the system through multiple approaches to charitable networks. To this end, the Charity Organisation Society (COS) was formed. Although it lacked any formal state powers, the COS organised and administered relief in a way that was consistent with the political ideology of laissez-faire:

'As to distress, there was a distinction between distress caused by preventable and distress caused by non-preventable ills ... no person would become blind or ignorant in order to share in a charity, but persons did become idle, debased and poor with that object ... many charities tempted people into neglect of forethought, and led them to suppose that any mischief arising from any cause, deserved or undeserved, was equally likely to receive the sympathy and aid of the benevolent public'.¹

Whilst administering the amount of charitable donations through one central body was designed to curtail abuse of the system, this in itself did little to repair what was seen as a lack of moral values among the poor.

Urbanisation and the breakdown of traditional community networks were perceived to contain a potential threat to social stability. The COS, in response, embraced as a further aim the education of the poor through the transmission of social and moral values in order to curtail any threat to and, therefore, preserve, the social order.

The COS devised a system whereby the dual problems of 'deservedness' and socialisation could be addressed through a single strategy. COS workers, operating from local area offices and reporting back to a central committee, were required to make contact with recipients on a basis of systematic visiting and keep careful records of the circumstances of individual cases.

As well as curtailing abuse, it was thought that the knowledge which would emanate from the contact between recipient and donor would both encourage the re-establishment of a form of community network and reward the COS workers for their 'gift' of personal service.

'Perfectly confident that all necessitous cases ought to be first thoroughly investigated and secondly properly attended to',²

the COS worked within a diagnostic framework, applying 'rational' and 'scientific' principles to the practice of private philanthropy in order to administer relief in terms of a treatment model, which was operationalised via the casework method.

Drawing a distinction between 'science' and 'mere opinion', the chairman of the annual meeting of the London COS pointed to the common principles and methods of various 'societies for the promotion of science':

'There is, first, the careful collection of facts, the sifting verifying them; then a refusal to generalise while the data for arriving at principles are incomplete and, more than this, a readiness to listen to new experiences such as may require even the best of principles to be absorbed and superseded by something larger. The COS is bound in like manner to conduct its investigations in the scientific spirit' (Sir Joshua Fitch, Annual meeting COS, 6/3/1899).

In practice, the process of inquiry was devised to:

- 1) Ascertain how, and by whom, applicants could be most effectually helped, and to test the truth of their statements.

- 2) To apply to each case such remedies as were likely to make the applicant self-dependant.
- 3) To obtain the help required, when possible, from persons known to the applicant: from their relatives, employers, charitable institutions and private persons (Ibid.).

Not surprisingly, the delay and intrusion casework created meant that the COS philosophies and practices were very unpopular among the poor, many of whom preferred to turn to the Poor Law Guardians, as of right, than to humbly accept the 'gift' of charity. Although some members of the COS were sensitive to criticisms and were self-critical,

'it was hardly too much to say that, on average, two thirds of the persons composing a committee had not made a real study of social questions' (Mrs. McCallum, London COS meeting, Oct. 1897).

In bringing together rich and poor, casework highlighted the inequalities but did nothing to challenge or change the wider social structure that produced them. Rather, in their commitment to curtail any perceived threat to the social structure through socialisation, the COS reinforced the process of inequality.

The Link to Probation Practice

In the combination of 'care' and control exercised over the lives of recipients, definite links can be drawn between moral welfare work and the work of the probation service. Probation as a disposal has been directed at reforming the potential recidivist, whilst those deemed unwilling or incapable of rehabilitation are deemed unsuitable (or undeserving) of this 'treatment'. Similarly, the process of inquiry designed to assess need and prescribe treatment has consisted of a combination of 'scientific' prediction scales, relating to both the offenders' circumstances and the distribution of resources, and various verification and classification procedures that might involve (or intrude upon) the offenders' family life or work environment. Whilst reports themselves represent the method by which the probation officer

constructs 'reality' and conveys knowledge, they also reflect the historical ideological foundations and, more specifically, the instrumental dimension of early moral welfare workers.

Today, the rhetoric of probation echoes that of its historical predecessor. An individualisation of the circumstances surrounding offending behaviour 'logically' calls for remedies based upon self-discipline (or self-help):

'Every case is different, all the variables of people, personality and behaviour create their own special problems and call for purpose-made solutions ...

... Any kind of supervision in the community depends to a large extent on self-discipline, which is linked to self-realisation, the development of a sense of purpose and responsibility which is more challenging than having decisions taken for you ...

... The probation officer must present a total picture of an offender's background, character and attitudes ...'³

Although patronage has been replaced with 'professionalism' this transition reflects a differing relationship to the State, rather than any ideological transformation.

The Transition from Patronage to Professionalism

The transition from patronage to professionalism must be seen in the broader context of state intervention into and control over the development of the probation service and welfare agencies.

The period immediately following the implementation of the Probation of Offenders Act, 1907, was beset with administrative disorganisation. Continued disagreement about who probation officers should be was further compounded by the lack of a uniform structure of either training or employment conditions. But as probation work increased in volume through the courts' use of it as an aid to their own functioning, the historical links to penal reform and

philanthropy were brought together by the conscious adoption of the casework method, hitherto associated with social work, as a means of attaining professional status.

Whilst the formation of a probation system had permitted the appointment of probation officers by the courts, their remuneration was sanctioned by local authorities. This gave rise to conflict, since any reduction in the prison population was seen to financially benefit central at the expense of local government. The responsibility for securing these arrangements fell to the Home Secretary, since he had the authority to appoint and pay clerks to the justices.

The appointment of probation officers was permissive, not mandatory, and depended upon the interests of local benches. In spite of the diversity of interests pertaining to the appointment of probation officers and whilst almost all officially appointed officers in London were recruited from voluntary societies, it was not unknown for police officers to be appointed or, as was the case in Wenlock, for magistrates to appoint themselves (Bochel, D., 1976, p.46).

Many of these early probation officers had other commitments and were employed on a somewhat casual basis, that consisted of temporary contracts and remuneration in the form of a fixed fee for each case, in accordance with the first Probation Rules issued by the Home Secretary. The Rules, which carried the force of law, documented the duties of the probation officer in greater detail than had been outlined in the Act. Emphasis upon visiting the offender and reporting on progress and/or breach to the court was accompanied by annual returns, via the clerk to the justices, to the Home Office that allowed a rudimentary statistical analysis of the new system.

In March 1909, one year after the Act had come into force, a Departmental Committee was appointed to review arrangements. In analysing the statistical data and considering the evidence of witnesses, the Committee recognised that a variation in the extent to which probation as a disposal was employed related to a number of shortcomings. Additional expenditure for local authorities, and extra work for magistrates clerks, were dismissed as

unjustifiable explanations for failure to implement. Familiarity and/or ignorance were considered to be more plausible explanations.

A widespread misapprehension that the Act, like its 1887 predecessor, applied only to young or first-time offenders, coupled with its limitations, compared with the Summary Jurisdiction Act, 1897, relating to conditions of residence, led many magistrates to opt for the familiarity of established sentencing practices. This led to a recommendation by the Committee that the law relating to probation orders should be amended to include powers to impose conditions of residence.

The lack of organisational structure of the probation service brought a recommendation that more supervision of the work of individual officers was desirable and the suggestion that one or two magistrates in each Petty Sessional Division should undertake this task. It was also recommended that a society of probation officers, managed by themselves, be established as a theatre of discussion and a means of disseminating information. As a result, the National Association of Probation Officers (NAPO) was established in 1912.

The Departmental Committee made no criticisms of the type of persons appointed as probation officers, but warned against the danger of

'regarding the provision of relief in money or kind as a chief element in the probation officers duty'.⁴

As influencing the offender's character through the medium of his or her own personality was regarded as the primary aim of the probation officer, reservations that the intrusion of the worker into the private lives of offenders was counterproductive to reformation were dismissed. It was realised, however, that scales of remuneration were inconsistent with the time consumed by the process of social inquiry and, although conducting enquiries at the request of the court was seen as a duty, the Committee reported that it was preferable to pay officers salaries, rather than fees. Level of payment was, in addition, connected with

recruitment of suitable officers and this made a necessary contribution to the development of the service (Bochel, D. 1976, ch.2).

Calls for a better organisational, training and recruitment structure were not answered until the 1920s, when greater state intervention paved the way for the centralisation and professionalisation of the service.

In 1920, a Departmental Committee was appointed by the Home Secretary to:

'enquire into the existing methods of training, appointing and paying probation officers and to consider whether any, and if so what, alterations are desirable in order to secure at all courts a sufficient number of probation officers having suitable training and qualifications; and also to consider whether any changes are required in the present system of remuneration'.⁵

The Committee decided that the services of a probation officer should be available to every court and that they should be appointed by magistrates. An argument for the continued recruitment of agents from voluntary associations was based on the principle that, from the offenders' perspective, probation officers who were solely agents of the court would conflict with their role as befrienders whilst, in the view of magistrates, probation and missionary work in the courts were not entirely distinct. But the Committee decided that the missions should not require their agents who were engaged in probation work to undertake as many other duties associated with the mission.

The desire to place probation officers on a full time basis was also reflected in the Committee's recommendation that the fee system of payment should be discontinued completely. NAPO had been, for some time, concentrating their efforts to secure a living wage and a pension scheme for probation officers, whilst the Howard Association had directed its concerns to the matter of formal training.

Social work training had been in its infancy when the probation system was established in 1907. The COS had established the School of Sociology in London in 1903 for the express

purpose of educating and training social workers. At the same time, the Fabian Society established their School of Economics. Whilst both recognised the importance of advancing claims of expertise to the level of recognition associated with professionalism, they each represented opposing views relating to the role of the State:

'The COS maintaining that state relief policies would be demoralising in their effects on the working class poor, whereas the Fabians were committed to state intervention and a dynamic managerial state as being capable of ensuring a disciplined and efficient (but still capitalist) society' (Jones,C., cited in Perry et.al. (Eds), 1979, p.77).

The two schools became amalgamated when the COS 'camp' severed itself from the ideological moorings of its founders.

Social work education 'produces' social workers through an educative socialisation process which

'legitimises social work intervention and carries with it the adornments of neutrality and science' (Ibid. p.87).

Whilst social work practice incorporates an internalisation of and commitment to particular ideological values transmitted via such socialisation, professionalism as a status and an occupational strategy requires the unification of training and expertise. Although they shared the ideological foundations and instrumental dimensions of traditional 'social work', the largest group of probation officers, the missionaries, were not involved with the limited training that was now available to social workers and were, thus, marginalised if not excluded from their associated professionalism.

For their part, the Committee did not see the role of the probation officer or the service in terms of a professional status:

'Whilst acknowledging that there was a need in the service for people with a university background, the Committee do not appear to have given serious attention

to the suggestion that the education and training afforded by the university social science courses was what was required for probation officers. An indication of its view of probation work can be gained from its comment that "It must be remembered that men and women who go to the universities usually do so to fit themselves for a professional career, and it is doubtful whether a probation service organised on the lines we consider desirable would provide opportunities or prospects which would usually attract candidates of university training" (Bochel, D., 1976, p.87).

The 'desirable' development of the service was that it should remain local but with a central authority, whose function it would be to keep tabs on the development of the service and to canvass it to the courts. It was within this context that a government grant in aid was awarded towards the cost of the service. This economic investment was accompanied by greater Home Office control over aspects such as the appointment and salaries of probation officers. The amended Probation Rules of 1923 prohibited the appointment of police officers to probation personnel and abolished the annual appointment system.

Between 1925 and 1936, the probation service expanded in size, function and status. At the organisational level, the introduction of pensions and training schemes acknowledged the role of the probation officer as a full-time occupation. By 1926, the Rules stated that the Home Office was to be notified of any newly appointed officers and the Home Secretary controlled the salary scales, which were increasingly designed to attract 'good' candidates. Compulsory record-keeping was added to the list of probation officers' duties, whilst the introduction of a pension scheme signalled official recognition of the role as a full-time occupation. No hierarchical organisational structure was introduced at this time, voluntary societies still making an important financial contribution to the service in the form of labour power. Personnel recruited through this avenue were obliged to pass a 'religious test' designed to preclude the recruitment of non-Anglican agents.

Within the broader systems context, this era brought the mandatory employment of probation officers by the courts, wider use of probation as a disposal, and the introduction of supervision orders and enquiry in the juvenile courts.

By the mid-1920s, the framework of sentencing policies and practices began to diversify. A report by the Young Offenders Committee in 1925 emphasised 'treatment' in relation to juveniles. The birth of the juvenile court provided a setting conducive to the application of probation and to the development of the social work of the probation officer. The Home Office referred to the Report in several circulars to the courts and stated that all probation officer vacancies should be advertised and a register kept by the Home Office of all personnel applying to the service.

Three years later, an Advisory Committee on Probation and After-Care instigated a training scheme, introduced in 1930, for probation officers. The scheme consisted of social science education and practical experience in the growing number of probation hostels and institutions. It was at this time that the Howard League introduced a Bill proposing that no voluntary agents should be recruited to the probation service and no probation officers should have to satisfy a religious test.

In 1931, the Children and Young Persons Bill was introduced to the Commons, a 'supervision order' relating to young persons 'in need of care and attention' being among its proposals. But, whilst the probation officer was to have similar responsibilities to this new class of charges as towards other probationers, no statutory place was awarded to probation officers in the juvenile courts.

The diversification of sentencing strategies reflected a re-assessment of social problems at that time. An escalation of unemployment during the economic depression saw the rise of psychology and its application to criminology. But whilst the expansion in size and function of probation serviced a changing political ideology, the structural location of the probation service still did not award its members professional status.

'The most important development in the creation of a professional probation service was the ending of the 'dual control' system between the Home Office and the Church of England Temperance Society. In 1926, the Criminal Justice Act provided for a probation service covering the whole country. This set the scene for the recommendation by the Social Services Committee in Courts of Summary Jurisdiction (1936) to place probation on a completely public and entirely full time basis' (Bochel, D., 1976, p.149, cited by Parry and Parry, 1979, p.30).

It was not until 1947 that social inquiry was formally introduced, through the Criminal Justice Bill of that year, as a duty of probation officers. Greater central control and a more complex organisational and administrative structure were reflected in the Probation Rules of 1949, when the expansion and diversification of the service coincided with and reflected a similar trend in sentencing practices and philosophies, and awarded probation officers a more secure bargaining position in the welfare market:

'During the 1930s there had been references of a rather unconfident kind to probation as a profession. Now, however, probation officers seemed more determined to have their claim to professional status recognised' (Bochel, D., 1976, p.183)

Through NAPO, probation officers had been at the forefront of campaigns that sought professional recognition and unification. But:

'The Association moved gradually away from its prime concerns of improving the work and knowledge of the officers and securing public recognition of the service, to taking on trade union functions such as bargaining over salaries and conditions. From the beginning, however, the Association sought to develop a relationship with the Home Office such that it was accepted as a representative body, competent to speak for the probation service and advise on legislative proposals' (Parry and Parry, Ibid. p.30).

Professionalism as a method of occupational control saw the segregation of different occupational bodies through their representatives when probation officers declined to join the British Association of Social Workers in 1970 because of fears that, as was the case in Scotland, a reorganisation of social service childrens' departments would result in the abolition of a separate probation service in favour of a generic approach. Casework, however, was employed as a unifying ideology and method common to social workers and probation officers. But although they share common historical roots, the structural positions of social workers and probation officers reflect the status of their clients and a relationship to the State.

The Structural Location of the Probation Service

As the nature and scope of State intervention in welfare developed, categorised groups of persons were recruited by and/or referred to 'alternative' state agencies located along a care/control continuum. An historical alignment with social work, coupled with a quasi-legal status, seemed to locate probation practice within the care, rather than control, arena. But whilst the distinction between care and control is superficial in that elements of both are present in each, the structural location of practitioners has implications for practice. During the nineteenth century:

'According to the theorists of the COS, the working class could be differentiated into three broad categories: 'first-class' workers and their families who had internalised the virtues of labour discipline, thrift, self-reliance and independence and whose character meant that they were rarely without work and never a burden on society; an intermediate group who demonstrated some good social habits but had not thoroughly taken them for themselves; and finally a totally demoralised residual section of paupers, beggars and criminals, who were seen as a continual and major drain on resources' (Jones, Op.Cit., p.74/5).

The COS attempted to prevent any relief being administered to the 'residual' category, their contention being that punishment was the most appropriate method of correction. The only legitimate domain for the nineteenth century philanthropists was the 'intermediate' category.

Although they adopted the ideological and instrumental dimensions of philanthropists, both the nineteenth century police court missionaries and their twentieth century counterparts have worked in relation to the 'residual' category. From the outset

"'Penal philanthropy' could have access to offenders only as and where authorised by the state. It is apparent from this that the same objectives (the transformation of individuals into moral subjects) will necessarily be promoted differently in the two fields" (Garland, D., 1985, p.126).

It is this relationship to the state, through the criminal justice system, which distinguishes probation practice from social work:

"To state the point simply, the state imposes an exclusive claim upon the treatment and administration of offenders, whilst no such monopoly is exercised in regard to the poor. Offenders only exist as such in and through the institutions of the state. The poor, on the other hand, exist and are made poor outside state institutions, in 'civil society'" (Ibid. p.125/6.).

In so far as probation as a disposal has represented a more humane alternative to harsher penal measures, probation practice has been seen as the welfare arm of the criminal justice. But the claim to be 'doing more good' becomes somewhat invalid if 'soft' options fail to represent real 'alternatives' to harsher penal measures.

The Alternatives - Care and Control

Because 'alternatives to custody' refers to anything outside incarceration, its usefulness as an analytical tool is limited and problematic in both conceptual and analytical terms. As we have seen, Foucault's (1979) analysis presents the birth of the prison as the original 'alternative', to ritualistic systems of punishment. As such, the penal system itself represented a response to political demands for a strategic combination of 'measure' and 'humanity'. Although Foucault's work is considered to be fundamentally flawed in that it improperly locates and characterises modern penality (Garland 1985), it has been influential in shaping other theses

relating to the theme of changing patterns of crime and control. In this vein, Vass (1990) attributes the birth of the prison as a major penal sanction

'... not just to the social, economic and political needs of the period, but also to the rise and fall of those alternatives which were initially designed to control offenders by diverting them from jail, capital and corporal punishment' (Vass, 1990, p.7).

During the nineteenth century, a 'surplus' of inmates awaiting transportation but with nowhere to go, coupled with the need to substitute workhouses because of their incapacity to contain 'dangerous' inmates, presented the prison as an ideal solution to the problems of reform and deterrence.

But it was not until the twentieth century that the diversification of offenders into the community had a statutory basis, as we have seen, through the Probation of Offenders Act 1907. In spite of the expansion in the use of both custodial and non-custodial measures over the following decades, and the expansion of all state services during the 'post-war era', the 1950s witnessed a sharp increase in both the crime rate and the prison population.

'This grim picture, and the escalating cost of maintaining a failing institution, further undermined the philosophy of containment and the practical capacity of the prison establishment to punish and deter adequately' (Vass 1990, p.9).

Although there was some scepticism relating to the effectiveness of non-custodial measures, and much ideological disagreement, 'community care' and the rise of alternatives saw the decarceration of many inmates, whilst others became diverted into the community.

Foucault (1979) had predicted that, with the growth of other mechanisms of normalisation and disciplinary networks, the prison would become redundant and disappear from the social landscape. Vass (1990) suggests that this institution has stubbornly remained because:

'In effect, the prison is a pre-requisite for the invention and evolution of alternatives' (Vass, 1990, p.15).

Vass sees alternatives to custody in terms of Foucault's 'policy of suspended rights', whereby the deprivation of leisure in the form of community service and/or attachment is enacted by the suspended threat of imprisonment which may be activated in the case of breach. Thus, 'alternatives' have had little effect on prison, which continues to expand, because each are dependant on the other for their existence. In Vass's view, 'alternatives' are, therefore, merely 'supplements'.

A similar view was espoused by Cohen (1985). Cohen suggests that, rather than representing 'new', 'progressive', 'alternatives',

'the new programmes become supplements, thus expanding the scope and reach of the system' (p.20).

Also drawing on the work of Foucault, Cohen locates the foundations of the present 'system of social control' with the policies and strategies of centralisation, professionalism, segregation and the development of a treatment model which were laid down during the eighteenth and nineteenth centuries. The 'conventional' view that these techniques were right in principle, but flawed in practice, later gave way to a disillusionment with the system as a whole and the emergence, during the 1960s, of a less idealist view. This 'radical' model, in turn, challenged both the aims and strategies of the system and, from this, deconstructing occurred. But, in Cohen's view, the resulting shift towards community left gaps between the rhetoric and the reality:

'Instead of any deconstructing, the original structure have become stronger ; far from any decrease, the reach and intensity of State control have been increased; centralisation and bureaucracy remain; professions and experts are proliferating dramatically and society is more dependant on them; informalism has not made the legal system less formal or more just; 'treatment' has changed its form but has certainly not died' (Cohen, S., 1985, p.37).

Rather than offenders being absorbed into the community, Cohen suggests, the community has been absorbed by the formal control system and this, rather than being progressive, represents a return to the nineteenth century 'master patterns', based on the principle of indefinite discipline, rather than their reversal.

According to Cohen, this 'new' system does not result in a reduction in the prison population or the crime rate but, rather, ensnares people *into* the system who would not otherwise be there.

Although Cohen's 'extension of discipline thesis' has been the object of other critiques for its failure to acknowledge the growth of non-disciplinary forms of punishment such as the fine (notably Bottoms 1983 and Nelken 1989), Cohen's observations hold implications for the role of the probation officer, as well as for the location of sentencing strategies, because if a 'widening of the net' has resulted in a 'blurring of the boundaries' what is *presented* as care amounts to control.

This seemingly ambiguous combination of 'care and control' gave rise to fierce debate during the 1970s. A radical critique of social work had emerged within the academic and political context of the post-war era that represented a shift away from a 'consensus' view towards a Marxist analysis. Exponents of the radical view saw care *as* control. Launching attacks upon the casework method as individualistic, social workers were defined not as 'helping' their clients but, rather, as encouraging them to adapt and/or conform to what radicals perceived as adverse social conditions. Walker and Beaumont (1981) outlined the critique and various responses to it.

In the educational field, radical social workers were accused of indoctrinating students into sectarian political ideas (Gould Report, 1977) and advocating lawlessness in the form of 'rent strikes' (Black Papers on Education). Whilst management and educationalists in social work attacked their left-wing colleagues as being 'unprofessional', probation officers challenged them to show how their work differed from mainstream practice.

Attempts to absorb radical critiques into mainstream practice claimed to include the incorporation of 'radical discourses' and the recruitment of 'progressive' individuals. But these moves were criticised as amounting to nothing more than superficial 'lip-service' which refreshed, but did nothing to challenge, traditional social work practice.

For their part, probation officers attempted to respond to the radical critique by consciously including references to socio-economic and environmental factors in their reports to the courts, but these attempts also proved to be 'superficial' in their effect. In failing to challenge the system, concentrating instead upon attempting to reconcile traditional and radical approaches to practice, various responses tended to do little more than 'plaster over the cracks'. Even the more radical of these, which attempted to incorporate 'good' social work methods - such as dealing with clients in an open and honest way and being self-critical - resulted in the separation of care and control, rather than their reconciliation. Moreover, in placing the emphasis for change upon individual practice, this response both reflected and ignored the structural context in which the probation service operates.

Role and Function

The structural context has implications for two operational levels that can be understood in terms of role and function, relating to the Service itself and to probation practice. As Walker and Beaumont (1981) suggest, in emphasising the similarities between probation practice and social work practice the care/control debate underplayed probation's connection to the legal system. Because the courts actively determine the work and the consumers of the probation service, it should be properly located within the general framework of the judicial system, its role being that of the 'welfare' arm of the coercive state apparatus:

'Because most of its functions are secondary adjuncts to the legal process, the operational definitions of the service are established by the judicial apparatus. This means that the Service necessarily upholds the law and the values of the law' (Walker and Beaumont 1981, p.142).

The legal system forms part of the welfare state which, according to a Marxist perspective, developed as a concession to working class struggles and, as such, contains contradictory functions that benefit oppositional class interests.

In order to superficially reconcile these interests, the State transmits and encourages the acceptance of a dominant ideology which presents the appearance of consensus. Through this production of 'hegemony', the State assumes a fetishised form whereby a surface effect of neutrality conceals conflictual underlying relations. This disguises what is, in reality, a consent-coercion operational basis to 'objective' and/or 'neutral' relations, which responds to any crisis in hegemony by introducing a coercive tilt into the balance of the equation.

Within this theory of the State, the probation service, like other welfare organisations, occupies a contradictory position. The values of capitalism occupy both the direct and ideological functions of the probation service so that in various forms:

'The probation service promotes conformity and discourages dissent, thus supporting the social order of capitalism' (Walker and Beaumont, 1981, p.144).

Reproducing capitalist social relations involves ensuring the provision of a labour force equipped with the necessary skills, attitudes and motivations. Probation officers contribute to this venture through their promotion and enforcement of community sentences that demand of the offender conformity, work and the acceptance of authority, along with an individual responsibility for criminal actions. Probation orders in particular directly enforce 'good behaviour' and the adoption of an 'industrious lifestyle'. Reports to the court are the vehicle by which such disposals are obtained.

The report has represented the functional means of assisting the court in reaching 'appropriate' and increasingly diverse sentencing decisions, as well as reflecting the role of the probation officer as an intermediary between their clients (offenders) and the State via the judicial system.

The history of report writing illustrates that presenting alternatives to custody has been one of the primary aims of the probation service and, as the central means of achieving this, reports to the court have formed the basis of its work. Traditionally serving as the medium of communication between the courts and the Service, reports not only represent a sentencing aid, but a diagnostic process enabling offenders to be matched to treatment in a fashion, reminiscent of the COS, that distinguishes the 'deserving' from the 'undeserving'.

The individualisation of the offender, through a combination of the techniques of 'hierarchical observation' and 'normalising judgements' described by Foucault (1979, pp. 184/194) is characteristic of what Garland (1985) characterises as the 'penal-welfare' strategies of the twentieth century.

This process has been redefined at the operational level of contemporary probation practice. The title 'pre-sentence report' (PSR), as opposed to 'social inquiry' report reflects recent shifts in sentencing strategies and philosophies implemented in the Criminal Justice Act 1991. Whilst the PSR differs little from its predecessor in the function of 'assisting the court in determining the most suitable method of dealing with the offender', the information 'relevant' to assessing this, in accordance with the principles of the Act, tends to be more offence than offender specific. This, together with the principle that community disposals should no longer be seen as 'alternatives' to custody, but as sentences in their own right, represents a departure from the traditional 'welfare' model of probation practice towards a more punitive application of the probation officers role. This supports Cohen's (1985) observations that a 'blurring' of the boundaries has occurred whereby probation and other community disposals have been severed from their 'welfare' moorings and relocated at the penal side of the punishment-welfare continuum.

Walker and Beaumont's (1981) hypothesis may offer a theoretical foundation from which to analyse these changes. Community disposals are likely to prove less popular in a climate of a perceived breakdown in 'law and order'. The resulting 'crisis in hegemony' is corrected by recourse to a tilt towards more coercive measures.

The shift in emphasis from 'welfare' to 'punishment' might be seen as part of a wider attack on the 'representatives' of the poor, also implemented through education and welfare benefit reforms. But it also challenges the notion that the probation service, or the Criminal Justice system that it serves, are either neutral or objective. Whilst

'Welfarism has tended to be associated with the diminution of magistrates powers, since welfare-based disposals have usually involved handing over discretionary powers to the social work agencies' (Parker et.al., 1989, p.4),

the traditional welfare role of probation officers has been harnessed by the State and, consequently, is informed and structured in relation to sentencing philosophies that are imposed from the top down.

'The determination of punishment rests primarily with magistrates and judges' (Ibid.).

To view welfarism versus punishment as probation officers versus magistrates would be oversimplistic. This equation is complicated by the historical relationship between both probation officers and their clients and between the magistracy and probation officers as servants of the court, that has defined the structural location of the probation service. But this relationship to the state through the criminal justice system and clients is played out in a local context.

'Earlier studies, notably Hood (1962) and Young (1979) compared the characteristics of offenders sentenced similarly in different courts and found considerable disparities which, both studies concluded, led to similar offenders being sentenced quite differently in courts. The importance of this first factor for the probation service is that any attempt to influence the behaviour of sentencers must be local, and be based upon a sound knowledge of the sentencing behaviour of local courts. In this context, national trends have little significance and even tables based on whole probation areas

are limited in their value by the extent to which practice within areas may vary (Roberts and Roberts, 1984, p.81).

But if concessions to welfare have been accompanied by a decrease in magistrates powers the, relatively stable, relationship between sentencer and report writer has reinforced, if not produced, sentencing discrepancies.

Within this operational context, the probation officer not only has a 'dual' role of 'care and control', she has to manage the, often opposing, interests of the court and the client in terms of her role and the function of the report.

Although the employment by the courts of social inquiry reports has evolved in relation to increasingly complex and diverse sentencing strategies and philosophies, sentencers have no statutory obligation to either request reports or follow the recommendations they contain. Probation officers, on the other hand, have an obligation to acknowledge sentencers' preliminary indications (i.e. preferences) as to 'appropriate' sentence and employ these as the starting point of reports.

Whilst this reinforces, rather than challenges, localised practices it also has implications that are further-reaching than local parameters because the relationship between the report writer, as servant of the court, and client, as defendant, is established *through* them. Offenders, for their part, voluntarily enter into this process - but we should be sensitive to what 'voluntary' means in this context.

Within this triangular state of affairs, the report writer, as intermediary, is concerned not only (and with how) to obtain a satisfactory outcome of the case for her client but also to maintain her own credibility in the eyes of the court.

Like the discretionary power of welfarism, the application of care or control in relation to clients is contradicted in practice because of the obligations of report writers to operate within formal and informal rules relating to report compilation that reflect and are imposed upon them by their structural location. Whilst different areas of probation practice are not mutually exclusive, contradictions and the management of them in relation to reports might be best understood in terms of the relationship between the role of the probation officer and

the function of reports, rather than in terms of the care/control model that has been applied to other areas of probation practice. Within this, the question is not simply whether probation officers exercise care or control, or care as control, but how much power or discretion they have to exercise any degree of authority and whom any such power or discretion serves.

Unlike care-control, role and function are complimentary as opposed to conflictual in their implementation. That is not to suggest an overall consensus. To introduce and acknowledge the imposition of function on role is to understand and acknowledge how control that is imposed upon the report writer via her relationship to sentencers filters down to PO/client interactions, and out (via the report) to influence the wider administration of justice.

Attempting to unravel the operational meanings and implications of this to the wider administration of justice necessitates a methodological approach that will address and acknowledge the implementation of 'top-down' policies at the grounded level in which they are practiced.

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Chapter Four

Research Methods

This chapter is an account of how the study evolved and was executed, rather than merely an account of which research methods were employed. The project goes back much further than the formal aspects of the research process - it is, to a large extent, a product of my own biography and, in itself, has a somewhat chequered history.

Background

Biography plays an important part in the research process. Having graduated in sociology, I spent the following two years working as a research associate in the school of law. During this time, my academic interests developed in terms of a 'socio-legal' framework, the 'legal' side of the equation relating to an interest in criminal law which arose as a direct result of the study I was engaged in.¹ Utilising direct observational techniques, the research focussed upon the lawyering behaviour of criminal defence lawyers and their staff and, in practice, involved direct induction into the judicial system. In terms of research training, valuable insights were gained into the problems and benefits direct observation generates. A working knowledge of criminal proceedings, together with practical experience of the observational method of research, influenced the direction which the present project took.

My experience as a research associate had brought me into contact with a variety of judicial agents as, in practice, 'lawyering' necessarily involves liaisons with police officers, barristers, court officials, prison officers and so forth. Although I had had little direct contact with probation officers, other than that they formed part of the court 'community', the social inquiry reports that were compiled in relation to offenders often played a vital role in the criminal cases I observed. It was in this, rather indirect, way that my own interests became targeted towards the probation service.

I formulated the idea of examining interactions between probation officers and their charges with a view to understanding how, in essence, social inquiry reports were compiled; a particular interest in accounts of female offenders was incorporated into this broad parameter. Entitled 'Constructing the Female Offender: An Analysis of Competing Accounts', in practice I proposed to (a) observe and document interactions between probation officers and their female charges during the compilation of social inquiry reports (b) interview probation officers in relation to (i) social inquiry report compilation and (ii) on accounting for female offending (c) interview female offenders.

I had envisaged that such a project could, perhaps, be jointly supervised as an interdisciplinary venture but, in the event, it was initially located within the department of sociology.

On becoming a post-graduate student, reading as a method was targeted towards theoretical and methodological issues that are raised within a number of 'key texts', as advised and defined by my supervisor. In attempting to address the problem of how to theoretically construct women's' individual experiences, without either resorting to individual pathology explanations or rendering individual experience invisible within the broad conceptual foundations of structuralism, recent contributions to feminist debates have focussed on epistemological issues and the centrality of language to judicial process.

Debates revolve around the social construction of justice which, in operating from ideologically-dominant models of 'women's place', simultaneously reinforces the social position of women and disadvantages them in terms of judicial process (Eaton, M. 1986). Within this framework, women are constructed and controlled by various judicial agents' claims to knowledge and expertise (Worrall, 1990), whilst documents tend to undermine the sense of women doing anything at all but, rather, portray women as perpetually moved by others agency rather than their own (Allen, H.

1987). Differing versions of reality thus come to be hierarchically constructed to produce competing accounts, whereby women's' own version of reality are subsumed within a larger construct (Young, A. 1990).

The methodological bases of these studies largely revolves around interviewing judicial agents and analysis of documentary evidence. Whilst these texts contribute much to our understanding of the 'discourse of deviance' and, as such, could be directly related to the project then at hand, I became increasingly concerned about the relationship between this framework and the proposed fieldwork. Concerned with retaining a focus on the interactional setting, I felt using discourse as the frame of reference led to gaps emerging in existing accounts. There were concerns of both a theoretical and practical nature.

Posing the question 'Justice for Women?' Eaton (1987) recognises that an:

'analysis of social inquiry reports is essential to any understanding of the processes at work in the judicial treatment of women and men' (Eaton, 1987, p. 108).

Whilst Eaton may be applauded for rejecting the 'traditional', but limited, approach of comparing differential sentencing of women and men, little is said of the interactions from which such reports emerge. Concentrating her efforts and drawing her conclusions from the observation of cases in magistrates courts, interviews with various personnel (including probation officers) and documentary evidence, Eaton inevitably presents us with an 'end-product' account as opposed to a dynamic construction and, as Worrall (1990) points out, in analysing the relationship between discourse and practice,

'there is a danger of losing sight of the speaking subject - what power, if any, does she have?' (Worrall, 1990, p. 10).

Worrall herself looks at how women are controlled through various agents of the judicial process and how they resist that control. Her analysis includes an exploration of official versus unofficial accounts but, again, data are drawn from documentary evidence and interviewing. As such, the focus tends to remain that of how agencies act upon individuals and how individuals respond, rather than the *interaction* of the parties involved. Here, we should take caution from Allen's observations that, in themselves,

'documents tend to undermine the sense of women doing anything at all, by presenting them as perpetually moved by others agency rather than their own' (Allen, 1987, p. 40).

Allen's analysis (1987) of psychiatric disposals also emphasises the centrality of language to the social processes that lead to such disposals. In an investigation at the level of the discourses of medicine and law, she nevertheless attempts to make sense of how decisions are made, and identify restraints that preclude alternative decisions being made, through an examination of documentary evidence. In addition, her research centres around:

'such a tiny minority as to be numerically almost invisible' of 'extreme' cases, rather than the 'routine' majority of cases appearing before the magistrates courts (Allen, 1987, p. 3).

Whilst these studies contribute much to our understanding that, in the process of writing reports or taking instructions, 're-presentations' are made, we have little knowledge of how or why gaps emerge. The proposed study was to be fashioned by omissions in existing accounts but, increasingly, I became concerned that discourse analysis was not the most appropriate theoretical foundation for understanding and explaining the complex processes and organisational context of either social inquiry reports or the construction of the female offender.

Influenced and informed by my previous research experience in a similar setting, I felt that taking discourse as the frame of reference neglected other features of report-writing, such as organisational restraints, and not only lost sight of the speaking subject but, also, of the report-writer and the extent to which *their* values and ideologies intrude into these instruments and that these accounts would have been fuller if direct observational techniques had been employed. In considering the empirical issues, a number of potential problems arose.

Female offenders form a minority of the criminal population and this in itself generates difficulties with regard to access, field relations and the quality of data produced.

Before gaining access to any research situation, where the research is to be conducted in an overt manner, the researcher must account for what it is she is doing in a way that is acceptable to those under study;

"the researcher should indicate interest in understanding the legitimate activities of a group or a person, rather than evaluating them"(Dean, Eichorn & Dean, 1969). As a first step to this end, it is recommended and necessary that the researcher should "have in mind some rather routine fact-gathering that makes sense to those in the field"(Ibid.)

In a topic that had evolved to be broadly concerned with the discourse analysis of gendered subjects, the problem of presenting the study to the potential research subjects without it appearing as a threat seemed difficult to resolve, particularly as initial access had to be gained from a bureaucratic organisation, that is, the probation service, via a number of gatekeepers, operating within an occupational culture which, past experience had taught me, did not readily accept the presence of 'outsiders'. Given this context, it is particularly important that

"the investigator does not maintain (or create) situations in which (she) is in conflict with the observed, provokes excessive anxiety in them, or demonstrates (what may be perceived to be) disrespectful attitudes towards them" (Schwartz & Schwartz, 1969).

The ethical implications of this aside for a moment, such practices distort data.

In order to establish and maintain good field relations, the researcher's role has to be acceptable to the research subjects who, for their part, may not know how to be observed (McCall & Simmons, 1969, p. 28). Observing interactions between probation officers and their female charges, because of the statistical status of the latter, would, in practice, mean short and intermittent visits to probation offices which, in turn, would produce the two, interrelated, problems of reliability and validity. The researcher is likely to both misunderstand the situation she is observing and be misunderstood through short, intermittent observations; the researcher's unfamiliarity with the research setting becomes coupled with the research subjects' tendency to emit what Van Maanen (1981) refers to as 'presentational data' and, whilst I accept that there are differing versions of reality, presentational data does not constitute a legitimate version for research purposes, although an awareness of the ways in which research subjects present themselves to other agencies or individuals during the course of their activities may reveal much about the occupational ideologies and practices at play - but these insights can only be gained through the familiarity bred by enduring contact.

As thoughts of what I wanted to do, and how to do it, developed it seemed that a focus on women within the framework of discourse analysis was neither theoretically nor empirically adequate to developing an understanding of the interactional setting between probation officers and their charges, that had fuelled my interest in the first place. Retaining a focus on the interactional setting was, it seemed to me, essential to an understanding of the environmental constraints and ethical and political systems

involved in social inquiry reports and, therefore, a grounded theoretical base, coupled with a flexible methodology was more appropriate than discourse analysis which, whilst reflecting and reinforcing the over-arching significance of workplace practices and philosophies, constituted only one factor which should be properly located within a broader parameter of research.

As the focus of the study shifted and broadened - to incorporate an exploration of issues such as occupational hierarchies, local policies, training and socialisation into political and ethical systems - the student-supervisor relationship deteriorated, to the extent that I was faced with the unenviable choice of either abandoning the project altogether or transferring supervision. The student-supervisor relationship as a factor of the research process is discussed below; putting this aside for a moment, suffice at this point to say that I transferred the project to the Law School where, with the assistance of a new supervisor, a revised research design was drafted.

The revised project no longer had a gender-specific basis. My earlier reservations about the practicalities of a gender-specific study were confirmed during the course of the fieldwork; from a total of 57 social inquiry report cases I observed, only two concerned female offenders. As such, the title of the project no longer bore any relation to the content, but I had to retain the title until the very last for administrative purposes as this was the only means the funding body had of recognising the research.

Aims and Objectives

The aim of this study is to present a contextualised account of social inquiry and pre-sentence reports in criminal cases. On one hand, this demands an exploration of the historical development of the Probation Service, on the other, in aiming to understand and present the ways in which reports are constituted and constructed, the primary focus of the study relates to how reports are structured and the extent to which value-systems and ideologies intrude into the preparation of these instruments.

Social inquiry and pre-sentence reports are compiled by probation officers, at the request of either the court or defence solicitors, between the conviction and sentence of some offenders. As such, the report itself represents both a process and an event which involves a complex set of relations between probation officers, their charges and court personnel. These relationships are, in turn, influenced and informed by organisational and legal constraints.

In examining reports, both as a process and as an event within their broader context, it is important to try and determine the extent to which the defendant is central or incidental to the end product - that is, whether she is able to contribute to the report, and the extent to which her contribution is played out only in terms of attributes such as gender or race, or offence-specific characteristics.

In the event, any comprehensive analyses of racism and/or sexism is lacking. This is because of the nature of the study sample. First, as I have already stated, the generally inferior numerical status of female offenders was reflected in the study and, thus, it was impossible to draw any in-depth gender-specific conclusions from observations relating to them. Second, the study was conducted in a relatively affluent location that lacked cultural diversity. Third, this location was imposed rather than selected in the context of obtaining access to the field of study. The net result is a study of probation reports that were compiled largely in relation to white males. Whilst this naturally occurring phenomenon obviously limits the extent of analyses in relation to racism and sexism on one hand, it also dispels, on the other, the myth of the young, black, poor criminal given that many of the offenders in the sample are, contrary to this image, affluent white people.

In practice, I sought to follow reports through from initial referral to the probation service to sentencing; attending any interviews with the offender relating to the report, attending court when the report was submitted and retaining a copy of the

report for my own files. In addition, magistrates and defendants were interviewed in relation to their perspective of reports.

The research focussed on cases in the magistrates court but, because of the complex work environment, a flexible methodological approach was essential to an understanding of the mechanisms at play.

Methodology

The appropriate methodological basis for a study of this nature is participant observation, "which allows real study of social processes and complex interdependencies in social systems"(McCall & Simmons, 1969). In comparison with quantitative methods, participant observation produces data within the context in which they occur and, as such, acknowledges the complexities of events, rather than presenting an over-simplified or isolated account of procedures.

Participant observation is not *one* method, but rather, a characteristic style of research which utilises a number of methods and techniques and involves "some amount of genuinely social interaction in the field with the subjects of the study, some direct observation of relevant events, some formal and a great deal of informal interviewing, some systematic counting, some collection of documents and artifacts and an open-endedness in the direction the study takes" (McCall & Simmons, 1969, p.1).

The non-standard nature of participant observation has evoked criticism relating to questions of subjectivity and the validity of the data produced by a qualitative approach. Critics claim that the researcher's engagement in field relations generates observer bias which distorts data that, in presentation, are not only impressionistic but defy comparative analysis.

'Critics of qualitative research suspect that the social sciences in which participant observation predominates, are also fields that recruit "counter-cultural romantics and displaced creative novelists" (Campbell, 1974, p. 3) ...

and ... warn that vivid personal testimonials can make participant observation sound truer than it might be (Borgida and Nisbett, 1977)².

Like other proponents of this method, I would argue that the 'weaknesses' of a qualitative approach are also its strengths; whilst the problem of bias (and the interrelated issues of reliability and validity) can be overcome with the utilisation of techniques, observation allows the researcher to reformulate problems as the research progresses. In a complex research setting it is important to have enough flexibility to be able to incorporate issues and questions into the research design that may not have occurred to the researcher prior to engaging in field-relations.

Access

The probation service is hierarchically-organised and gaining access, therefore, involved a process of negotiation with various 'gatekeepers', themselves governed by specific guide-lines relating to who, and for what reasons, access of 'outsiders' would be granted:

"Where research work requires access to probation service records, it is necessary to establish the merits of the project and its likely demands on the service".

(Jarvis's Probation Manual Probation I).

Because of these organisational constraints, gaining access to the probation service proved to be a lengthy, but informative, process. Aided by the extensive research experience of my supervisor, I persevered for some eight months before my application to conduct research into what is, after all, a public service, was accepted.

My initial request for access was directed at the chief probation officer for the region in June, 1991 (see document 1; appendix A). A response came back, at the beginning of July, from the 'Research and Information Manager'(RIM), suggesting

'a meeting with (herself) and the senior probation officer (SPO) in (a division) to discuss the proposals in more detail ... and to indicate areas of particular interest to (ourselves)'.

The meeting took place, as arranged, later the same month at the regional probation service headquarters. Prior to the meeting, I discussed with my supervisor how I would present the research proposal in such a way that would be acceptable to all parties concerned - thus, acquiring access into a research situation involves compromise, not merely negotiation, a point which became evident during the course of the meeting.

The meeting was of two hours duration and produced some positive and some not-so-positive results. All parties present took notes throughout, which I recorded and present here in order to illustrate some of the fundamental issues which arise during the initial process of consultation and justification:

SPO: Can you explain exactly what it is you're interested in?

AP: Generally, I'm interested in looking at the role and work of the probation service from their perspective as probation officers. It's difficult to provide specific details at this stage as I want to learn from officers themselves, rather than come in with any pre-formed ideas but, given the restrictions of a project of this size, I want to target the research to court-based and related work in relation to social inquiry reports.

SPO: We have many applications to conduct research, and the Home Office has its own on-going research unit, can you say why you're interested in the work of the probation service?

AP: As I explained in my letter, I have already had extensive experience of the court environment and, through that experience, my own interests

have developed in terms of a socio-legal framework. Although I've had little direct contact with probation officers, I have become familiar with the reports they prepare and, as the criminal courts and criminal proceedings are familiar to me, I feel that I would require little or no induction into the probation service and, therefore, would not cause undue disruption.

RIM: Are you doing this for the purpose of a Phd?

AP: Yes.

RIM: Are you restricted in any way by the grant?

AP: I have to work within boundaries, but they are very broad in terms of the content of the thesis - in this instance, the research must be related to "the probation service", so it's very flexible.

RIM: Good, because we have very little opportunity to engage in qualitative research and there are obviously areas that we would be interested in ourselves - would that be acceptable?

AP: Yes, as I want to look at this from probation officers' perspectives, what concerns you is of natural interest to me.

I noted that, from this point in the negotiations, 'it became less of an interview and more of a discussion'.

These initial 'gatekeepers' expressed an interest in the consumers view of the service and being granted direct access to probation clients emerged as a real bonus but, in outlining my own conditions, I was careful to state that I could not be expected to act as negotiator between officer and client and that assurances of confidentiality would be extended to all parties involved in the research. Similarly, whilst I was grateful that probation had declared that they were willing to arrange interviews with magistrates, I

again made it clear that I could not be employed as a go-between but, rather, that my role was to remain that of objective observer.

Apart from the practicalities of conducting the research, this initial meeting was important and informative in relation to my own desired aims and objectives. During the course of our discussion, it became apparent that there were a number of areas of conflict between the court and the probation service involving, what these particular officers regarded as, 'bad practice', decision-making and 'credibility' and ideologies:

"...radical politics have no place in court...it's much more important, in both the long and short term, to retain credibility, otherwise you are in danger of being easily dismissed, and our status in court is marginal at the best of times. Those probation officers who engage in challenging the court are usually influenced by the union, and I think it's very unprofessional" (SPO).

In addition to these issues, I noted the need to beware of 'presentational data'; there was a definite reluctance not to let me observe the *disorganisation* of the probation service - they did not want me to begin fieldwork when, for example, they were short-staffed, or to make the focus of the study forthcoming changes in practice, implemented by the Criminal Justice Act, 1991, because:

'no-one is yet sure how it will be implemented in practice'. (SPO)

In fact, these and other similar issues were, at various stages, submitted as reasons for formal refusal of access (see Appendix A, Documents 4 and 9).

There were surprisingly few references to clients during negotiations for access, for the most part the discussion revolving around the image of the probation service and the organisational aspects of the service which, although governed by specific rules and regulations, left room for individual implementation, as I was to discover later. At this stage, it was decided that probation officers would be asked to voluntarily take

part in the research and to consent to my presence at interviews with clients - again, I made a cautionary note that the ethics of this may have implications for data.

I was asked whether I knew the difference between a s.18 and a s.20 of the Offences Against the Person Act, and it was suggested that I familiarise myself with probation rules before entering the field, which illustrates the importance link between knowledge and access. But access itself now seemed to be a mere 'formality' as it was provisionally agreed that fieldwork would commence on September 9, 1991. I was to prepare a proposal, based on the negotiations conducted, to be submitted to both parties in attendance by August 13, (see appendix A, document 3) which would then be distributed at their next 'team meeting' (comprising the probation officers attached to the division); I was to give assurances of absolute confidentiality (which I had already given, both in writing and orally); probation would have access to any final report I prepared as a result of the research.

The process of fieldwork began with the compilation of a diary; I shall discuss the methodological issues relating to fieldnotes later, but refer directly to this instrument now in relation to access:

Research diary extracts

Monday, September 9, 1991

Went to the probation service to introduce myself, even though SPO had suggested that I go directly to court and she would inform the court team to expect me. The receptionists at the office knew nothing about my arranged arrival and I was told that the SPO was off sick. Eventually, a PO came to collect me in reception but she had no knowledge of the research either as she has just returned from being on holiday. I was introduced to the court team and a 'field-work officer' - that is, a PO on a rota system in court. Throughout the day I had to keep introducing myself to various personnel in the court and

the office and explaining about the research as no-one seemed to know anything about it. I explained that a summary of the research proposal was, as I understood it, distributed at their last team meeting - a couple of people vaguely remembered 'something about that', and one PO thought that 'that had got turned down in the end because it was too demanding'. So, a somewhat worrying day today. SPO returns tomorrow.

Tuesday, September 11, 1991.

Worrying comments confirmed today when SPO arrived to say that I shouldn't be here! It seems that the research was thrown out at the team meeting on August 21, so I was politely asked to leave. I rang the University, who confirmed that I had received a letter denying access (see appendix A, document 4), but that the letter had gone astray in the internal postal system.

During this brief, unauthorised, period with the probation service I had accompanied probation personnel to court and to the cells, recorded interactions with clients in court and in custody, had access to records and collected various administrative documents relating to the processing of cases. All of this was possible because, in a large, bureaucratic organisation, everyone assumed that authorisation had been granted by someone else. If the SPO had not returned from sick-leave I have no doubt that the fieldwork would have continued. However, I was now back to square one - almost.

My supervisor now re-negotiated access, by telephone, with the Research and Information Manager, who agreed to re-submit a more detailed proposal to another probation office in the region (see appendix A, document 5). In the meantime, I sent a further letter requesting access to a third probation region (see appendix A, document 6) and awaited response from either or both.

On October 29, 1991, I discovered a week-old message in my post at the university, saying that the RIM I had been negotiating with had telephoned to say that access had

been granted at the second probation office. I contacted her, by telephone, and she, in turn, gave me a contact telephone number of the SPO concerned who, I was informed, had discussed my proposal with his area senior probation officer. I immediately made contact with the SPO - noting in my research diary that he 'was very friendly, but says that POs are apprehensive regarding the amount of client-team contact involved' - and arranged a meeting for November 4, 1991, at the probation office concerned. It was now over four months since I had initially approached the probation service.

Again, I took notes of the meeting and present a summary here in order to highlight some of the issues involved:

Research diary extract

It was agreed that I would pick up referrals, whenever possible, in court and follow the case through to disposal, but the organisational aspects of the division presented potential barriers to this.

Unlike probation office 'A', it seems that this office is rather diversified, it being one of a number of 'satellite' offices which form the divisional area. Cases referred from this court are allocated to the relevant office, according to the offender's address, initially by post and then according to internal allocation procedures of the office involved. This meant that I would not necessarily be there to 'pick up' cases at the interview stage. The SPO suggested that we overcome this by attaching a letter to the referral form, requesting that I be contacted (see appendix B, document 1). (This was the system I later adopted).

The diverse structure of the region also presented geographical problems in that I could only be in one place at one time and, because of the distances involved between offices, it would be difficult to concentrate on more than one at a time - especially since I was dependant on public transport. To

overcome this, we decided that I would divide the fieldwork into blocks, whereby I would follow through referrals for one office at a time. For my part, this arrangement held the perceived advantage of becoming familiar with and to the probation officers concerned and, thus, mitigating the problems of 'presentational' data.

The practicalities of conducting fieldwork aside for a moment, the SPO also expressed concern with the politics of the research process. It was conceded that Home Office approval had been indirectly granted through the RIM in her capacity as an agent. Of more direct concern to the SPO was his personal credibility, and that of the service, in relation to the magistrates and colleagues.

Expressing concern that interviews with magistrates would have to be arranged via the chief clerk to the justices, he offered to arrange this personally. I stated that, whilst I appreciated his help, I did not want to overburden him and would be happy to approach magistrates myself,

SPO - 'It's a matter of politics really - it would be better coming from me - I'll approach the clerk informally in the first place and then we'll take it from there. I don't want to disrupt our relationship with the court - it's definitely better coming from me, as SPO. They like us to know our place, basically. We have these liaison committees, where magistrates and probation officers get together to discuss reports and so forth, but nothing ever comes of them - the probation officers don't want to 'rock the boat' in case they have to submit a report to the magistrate concerned, and the magistrates are quick to criticise and slow to praise - it's a waste of time really - it's about politics and a lack of communication - perhaps your work will throw some light our way'.

This interaction not only illustrates the ongoing process of negotiating and securing access, but also the need, on the part of the researcher, to be sensitive to the internal dynamics and politics of the organisation under study. Similarly,

"in hierarchical organisations, researchers should be aware of the ethical implications for participants lower down in the hierarchy"(Burgess, 1984)

and the implications of this to access. In contrast to the first SPO, who had negotiated with officers before refusing access, this SPO informed me that, whilst he still had to 'sell' the research proposal to 'his' officers, that his word 'goes around here, basically they'll do as they're told'.

From my own perspective, the positive side of this autocratic approach was that, unlike the first probation office I had approached, it was unlikely that probation officers would act as a 'screen' of selectivity through voluntary participation.

However, I was now very aware that some probation officers may be resentful of my imposed presence and that this might present barriers which I would have to overcome if I was to avoid presentational data.

The meeting terminated after two hours of negotiation, during which I was once again assured that access was secured and the meeting was 'merely a formality'.

The research proposal was still to be submitted to the teams of probation officers involved and to a managerial team meeting, both of which were to take place during the following week. I had no further contact with the SPO concerned until November 19, 1991, when I telephoned the office for a 'progress review' to be told that his 'line was engaged'. I requested that he call me back, but having still had no response an hour later, rang again - to be told that he had 'left the office to go to a meeting'. I made a further call the following day and finally made contact. I was told there was,

'no problem with access so far as the probation team (was) concerned, but the proposal (had) been put to the managerial meeting a week ago and there (had)

been no response yet. The deputy clerk to the justices (had) been informally approached and there (didn't) seem to be any problem there relating to access to magistrates'.

A note of caution here to other researchers - never rely on 'them' to call you, rather, be persistent but patient and take control of the situation!

A further meeting, to finalise access, was eventually arranged for December 10, 1991, when it was decided that I would compile a letter to probation officers that would be attached to report-referral forms, as we had previously arranged (see Appendix B, document 1), and that fieldwork would probably commence in February, 1992. One, final, meeting was held in January, 1992, when I submitted a draft of the letter (which proved to be a vital part of the access process during fieldwork and which was slightly modified to incorporate legislative changes at a later stage), was introduced to the 'court team', and a date was set for fieldwork to commence. I began the fieldwork on February 17, 1992, almost eight months after I had initially requested access.

To sidestep for a moment, it will be recalled that negotiations for access involved three separate probation areas - the initial office, which had refused access but whose refusal, through a lack of communication on both sides, I was unaware of until after I had embarked upon the fieldwork; the 'accepting' office, where fieldwork was eventually conducted and a third, 'intermediary' office, with whom I negotiated access between the initial and the accepting offices. The intermediary office also refused access; although I complied with their requests to submit an elaborate research proposal (see appendix A, documents 7 and 8), access was refused without the benefit of any personal negotiations taking place (see Appendix A, document 9).

From the relative security of 'the office', securing access *to* the field had been a formal process. Although I had now secured access into the probation service, it would be misleading to suggest that the process ended there; access *in* the field had to be negotiated and secured every time I met a new probation officer, client, prison officer

or member of the court personnel. In the field, access depended on knowledge, dress, field relations and the utilisation of techniques relating to role.

Field Relations

In practice, I spent a period of some eleven months in the field. Typically, my day consisted of attending court in the morning and attending report interviews between probation officers and clients, either in the office, in prison or at the clients home, in the afternoons. There were, of course, variations in this schedule as and when appointments or court appearances dictated it. Interviews with magistrates and with offenders were slotted into the fieldwork as and when arranged. In addition, I was invited to attend training sessions and team meetings with probation officers, as well as meetings between probation officers and magistrates at 'probation liaison committees'.

In order to follow cases through from referral to disposal, and because there was no way of knowing which of the cases before the court would be referred for social inquiry reports, many, seemingly wasted, hours were spent sitting in the magistrates' court. In instances where a defendant's case *was* adjourned for reports to be prepared, the court team personnel (a probation officer and a probation assistant) would introduce me to the client as they took particulars for their own information transferral form (called a PAC 1 form), so that I was able to introduce myself to the offender in court, rather than simply appearing at the arranged interview between themselves and the assigned probation officer at a later date. If the offender agreed to my presence at the interview, a letter was then attached to the PAC 1 requesting that the probation officer assigned to the case contact me in relation to the interview arrangements(see appendix B).

This system was by no means foolproof - some appointments were lost because officers forgot (or, perhaps, deliberately failed) to contact me, others could not be kept because of overlap which, in effect, meant that I had to prioritise cases and, when

this became necessary, I endeavoured to do so on a strictly 'first come, first served' basis in order to eliminate bias. In other instances, usually when I was not present in court, the court team forgot to attach the letter requesting contact to the PAC 1 form: by virtue of the same situation, I was not always able to gain the consent of offenders to attend interviews, although I requested their permission before the interview commenced in these circumstances.

In order to keep track of cases, I kept a diary of appointments and court appearance dates relating to individual offenders with me at all times, whilst, for the purpose of fieldnote references, I compiled an index-system according to clients' names which allowed ease of case-reference for analytic purposes.

Interviews between probation officers and their clients were tape-recorded, wherever possible, and later transcribed - as were interviews with magistrates and interviews with offenders. Whilst this allowed for fullness of recording, and contrary to some opinion, was less intrusive than taking written notes, it sometimes happened that tapes were not clearly audible or that batteries went flat mid-interview! I ensured that I always had pen and paper at hand as a safety net against these circumstances, but the fullness of recording that tape-recorded interviews allowed meant that, lacking secretarial support, many hours were spent transcribing - a ratio of roughly seven to one. My advice to other researchers would be to transcribe, whenever possible, as soon as practicable after the interview rather than to set aside a 'batch' of tapes. In spite of this fullness of recording, features such as raised eyebrows or lack of eye contact are obviously not detected by the tape but might be very important to the context and atmosphere of the interview. This meant that the tape recorder alone was insufficient and inefficient as a research tool and that all recorded interactions had to be complimented with observation, again recorded as soon as possible after the event or contemporaneously when this was practicable and not disruptive.

I retained a copy of any reports which were produced, in addition to copies of other documents relating to the case, such as the prosecution evidence, psychiatric reports and so forth. Whilst documentary evidence can be usefully employed as informants,

'often such documents are based on regularized procedures..the views contained are partisan or merely official views, but these are often important data in themselves...the chief difficulty with such documentary surrogates..is that they are usually incomplete, unsystematic, tantalising - but tangential...documents cannot be probed or cajoled in an attempt to overcome these difficulties' (McCall & Simmons, 1969, p.63).

These weaknesses illustrate the need for contextualisation through observation. I was able to employ probation officers as informants by discussing particular cases or general issues with them in an informal way. Interviewing informants (as opposed to respondents) produces its own ethical implications by virtue of the fact that it involves a certain amount of instrumentalism and covertness, both in actually obtaining the data and in interpreting and using 'off the record' remarks.

In court, I was able to take contemporaneous notes of the proceedings when cases went back for sentencing, whilst less formal interactions were recorded in a fieldwork diary, which I compiled on a day-to-day basis. The 'seemingly wasted' hours in the magistrates court were recorded in the fieldwork diary and, in practice, constituted a rich source of information pertaining to the interplay between value-systems, occupational hierarchies and ideologies and working practices. Through my association with the probation court team during this time, I was also able to 'network' - that is, I was able to be formally introduced to other members of the court community and generally make my face known. This in itself was vital to the fieldwork as success depended upon gaining a high level of acceptance, both within the organisation under study and with other agencies and individuals with which the probation service came into contact.

Junker (1969) has suggested four theoretically possible roles for the sociologist conducting fieldwork, ranging from complete participant at one extreme to complete observer at the other - participant as observer and observer as participant lying in between. Each generates its own strengths and weaknesses, but all represent:

'at once, a social interaction device for securing information for scientific purposes, and a set of behaviours in which an observer's self is involved' (Gold, 1969, p.30/31).

I could not, for the purpose of the study, become a probation officer - even had this been possible it would contain its own problems of objectivity and ethics - rather, I sought to become an accepted 'staff member' by adopting the role of participant-as-observer, whereby

'the fieldworker and informant are aware that theirs is a field relationship' (Gold, 1969, p.34).

The presentational effects associated with this awareness, however, are minimised by adopting various techniques to ensure that the researcher is able to develop relations with those under study to a sufficient level of scientific objectivity and subjective or interactive understanding of the field.

From the outset, dress and demeanour were central to the research - even if I could not *become* a probation officer, I had to *look* as if I were one when I went to court. The importance of this became obvious when, a few months into the study, a student probation officer was sent on placement to the court team I was working with. The probation officer told the student to sit at the back of the court, in the public gallery; when the student was out of earshot, I volunteered my seat in court (next to the probation officer) so that the student might be in a better position to observe and understand the proceedings, but the probation officer refused my offer, stating:

Fieldnote extract

PO: 'I don't want her sitting here - she's improperly dressed - I shall be contacting her supervisor about it'.

The student was wearing jeans and t-shirt, rather than the 'smartly casual' attire usually worn by probation staff.

The fieldwork began very slowly, fieldworker and subjects being mutually aware that theirs was a field relationship; whilst it was important to maintain this balance throughout the course of the study, it was also vital to gain the trust and acceptance of the research subjects. To this end, my knowledge of court proceedings ensured that I was not a burden to those under study, whilst, for the first week or so, I refrained from taking too many written notes in order that I would not appear a threat. Similarly, if I wanted to observe in a particular court, or read documents, or use the telephone to arrange appointments, I always asked the permission of the court probation officer - this is not just a matter of manners, but a way of showing deference and respect, particularly as the probation officer concerned was ready for retirement and her length of service awarded her a seniority that exceeded her rank. I knew that to gain the acceptance of this particular officer would be the key to gaining the acceptance of other staff members - or, at least, her disapproval would certainly have presented barriers.

If these associations seem instrumental it is because I am trying to illustrate technique - that is not to say that a real relationship did not exist between us. I spent more hours with the court team than with any other individual officer and many of these hours were spent engaging in 'small talk', becoming knowledgeable about and accustomed to one another's everyday, as well as working, lives. Whilst these interactions undoubtedly assisted my research role, in that they reinforced the subjects' acceptance of that role, they were nonetheless genuinely part of my self that was freely given.

An awareness of 'role' and 'self' does not counter the problems of role-pretense - that is, of being 'everybodys friend' everyday - as Malinowski (1967) observes:

'While the "nice guy" front is proclaimed as the ideal fieldwork approach, it is difficult to maintain in a day-to-day basis throughout a long study'.³

Nor does it automatically resolve the practical and ethical dilemmas which sometimes arise as result of this status, but knowing role and self demands allows the use of role to protect infringements on self and self to develop new tactics when role appears inadequate.

During my time with the probation service, there were both formal and personal disputes between members of staff. Often, individual officers would confide their grievances about other officers, management strategies, or 'rival' probation offices to me. This may have been because I was seen as an objective observer, or it may have been that I was perceived as a trusted colleague. Either way, I employed my role to ensure that I did not become embroiled in these disputes, listening to and, often, noting, these events but always refraining from passing my personal opinion. Neutrality here was more than a non-interventionist strategy, it became part of self-preservation.

Likewise, when role in itself seemed inadequate, I employed self to reinforce and legitimate it. The research was divided into blocks of time, so that I would spend x amount of time at a given office - usually at least one month, as this is the normal period of adjournment for reports to be prepared. Whilst this had the advantage of diversity, it meant, in effect, that I had to constantly start almost anew each time I transferred to a different office - I say *almost* anew because, apart from my initial induction into the probation service, I was never really starting from scratch, as knowledge of my presence and purpose travelled rapidly along the formal and informal grapevine and, occasionally, I was introduced to various participants through meetings or training sessions. On one occasion, I had arranged to attend a report

interview at a 'new' office and, as I had arrived early and the officer was engaged with another client, I decided to follow up another appointment with another officer in the office whilst I waited. When I contacted her on the office telephone, I was met with some hostility:

Field note extract

AP: Hello, this is AP from (probation area), I'm calling about (client), I understand he has been assigned to you?

PO: Yes.

AP: I just wanted to verify the appointment for his report interview so that I can confirm whether or not I will be able to attend.

PO: What do you mean, attend? Nobody's said anything about this to me! He's coming in in ten minutes - I take it you want to sit in?

AP: Oh - if you're seeing him this morning I won't be able to attend as it overlaps with another appointment - I'm sorry - I thought everyone had been informed about the research.

PO: Well nobody's said *anything* to me.

AP: I'm sorry, there should have been a letter attached to the PAC 1.

Rather than leave this interaction to fester unattended, I went to see the officer concerned, who had a reputation for being somewhat aggressive, after I had kept my other appointment. I did not feel I could rely on my role here to gain access and was, at times like these, particularly aware that my presence had been imposed by senior-ranking officers. When I introduced myself personally, the officer seemed reassured that I did not present a threat, either to herself or to the integrity of the client-officer

relationship, and we were able to part on a friendly footing which, in turn, left the avenue open for future interactions.

Access should never be presumed, but has to be negotiated and maintained on a daily, if not hourly, basis. There was no particular point in the process that I *became* accepted, that my status dramatically changed. I would be introduced to offenders as a 'colleague', but this was a matter of protocol - interestingly, I was introduced to other officers or court personnel as a 'researcher'. I came to realise, however, the extent to which I *was* accepted when a probation officer was discussing the relationship between probation staff and police and other court personnel:

Field note extract

PO: ...its very important to make your face known and form relationships with solicitors - defence *and* prosecution - it's important to have good working relationships...when I first came here, for instance, probation were refused access at the police station - it makes life very difficult - my predecessor had been caught looking at files without asking permission - it took a long time, but I'm on very good terms with the police and jailers now, I can visit the cells every morning and they're forthcoming with information - it makes all the difference....

The techniques are familiar, but I realised at this point how much this officer trusted me to allow me to participate in her delicately established working relationships; I now understood why, at the outset of the research, she would politely say - 'why don't you go and get a coffee while I see this client in the cells, it's nothing that would interest you, just a bail hostel place, I won't be long'- and I now appreciated the degree of acceptance involved as she unhesitantly took me along to the cells with her whenever she had a client to see, whether in relation to social inquiry reports or not. Indeed, the status of 'outsider' can be overcome to the extent that the researcher is:

'often defined as more of a colleague than (he) is capable of being' (Gold, 1969, p.35).

Acceptance can generate its own problems, not least because the role of the researcher should be a non-interventionist one if she is not going to create unnatural situations in the research setting. Although I encountered few problems in this area, there were occasions when I was asked to take the place of the probation staff in court if they were otherwise engaged.

On some of these occasions, magistrates or the court clerk, familiar with my face and knowing I was seated in probations' place in court, naturally mistook me for a probation officer and, as is the procedure, instructed defendants to see me outside before leaving the court building if the defendant was either sentenced to a term of probation or his case was being adjourned for reports to be compiled. In these instances, I would ask the offender to 'wait a moment whilst I find my colleague' but, if probation staff could not be found, I informed offenders that 'someone from probation will be in touch', according to the familiar routine, and then gave the particulars to probation staff at the earliest opportunity.

Although I never felt that these interactions ever *created* a situation, the problem was that of reconciling my own conscience. I felt unable to tell the offender that I was not a probation officer as, to have done so, would have been to somehow betray my 'colleagues' and, perhaps, evoke feelings of insecurity in the offender but, nonetheless, I was as uncomfortable in concealing my true identity to the offender as I was about revealing it to the court at an inappropriate stage in the proceedings.

Role - or self - should not be seen as static; in reality, there was not *one* role at play but, rather,

'...the variation existing in the environment as well as that among the people studied, require a situational and flexible set of guide-lines that are not easily

categorized - even when writing from the luxurious perspective of hindsight' (cited by Van Maanen. 1991, p.903).

In practice, a variety of situations dictated a variety of roles. The role of observer was not the same as the role of interviewer, for instance, and, similarly, the role of observer was projected differently in relation to different subjects. Similarly, self is presented differently to different people - I did not approach interviews and interactions with court personnel in the same way that I approached similar situations with offenders, for instance. This is not peculiar to research, we all tend to act and react 'appropriately' in everyday situations.

Far from being unscientific, experience taught me that the most productive working relationships are co-operative; in practice, gaining acceptance is a two-way process which involves an investment of the researcher's personality as much as that of the researched. I found that the confidence gained through familiarity with the research setting was itself conducive to gaining acceptance - in short, there seems to be a correlation between behaving and being treated as an outsider and, whilst it is difficult to state which is the cause or effect of this situation, the researcher's self is as much an influence or a key to acceptance as that of her role or the researched. In this process of definition and redefinition, an awareness of role and self strategies better equip the researcher to deal with and handle the issues and resources at hand and, in turn, to reassure research subjects.

This degree of immersion in the research setting is at odds with the distance and anonymity of, for instance, surveys and experimental designs, but this does not necessarily make participant observation more susceptible to distortion:

'The lack of anonymity of respondents may ensure that the researcher observes phenomena as they are, and not as the respondent or researcher wishes they were, particularly if the research continues over many weeks or months....they cannot put on an act or continue to function with their fellow workers. Even if

the researcher could not recognise an act of distortion, the actor's associates would, and the researcher would probably hear about it' (Kidder, L., 1981, p.109).

Until acceptance is won, the researcher is likely to encounter a great deal of 'presentational' data, which may give a misleading impression of the way the organisation under study functions and this is, in turn, exacerbated by the nature and objectives of qualitative methods where it is, in any case, difficult for the researcher to know what is 'relevant' information. Relevance, in turn, is a subjective concept which, by definition, carries its own code of ethics and implications for the reliability and validity of the study. From the wealth of material amassed, much has to be sacrificed or rejected as 'presentational' - although this does not necessarily mean that such recordings are wasted, as presentational data may serve to confirm 'operational' material.

A degree of objectivity is attained through the scrutiny of fieldnotes by a third party (in this instance, my supervisor) who, unlike the researcher, is not familiar with the personalities of the research subjects and, therefore, is unlikely to favour any individual account over any other - but I doubt whether complete objectivity is attainable in any research method as the investigator inevitably invests her own personality and priorities into the research process.

Interviewing Offenders

I interviewed offenders with the aim of presenting their perspective of social inquiry reports within the process of the criminal justice system. I saw this as a vital component of the study and one that was frequently lacking in other studies of this nature.

The only realistic way of gaining access to this group of research subjects was through the probation service,

the only requirement being that each respondent had, at some time, been the subject of a social inquiry report. A senior probation officer suggested, initially, that I contact potential respondents, drawn from the 'observation' sample, by post, requesting that they attend an interview with me, on a voluntary basis, at the probation office. I was reluctant to adopt this approach, as I felt that (a) correspondence might fall into the wrong hands and, thus, reveal that the offender had made a court appearance, and (b) that the 'observed' sample would associate me with their probation officer, as I had been present at the report interview and might, thus, put them feel under an obligation to participate.

It was eventually decided that I would draw the sample from a pool of probationers who had not been part of the observation sample. Initially, I consulted probation officers and requested that they put me in contact with clients on their caseload.

Although I was known to these officers and I gave assurances that interviews would be of a general nature, rather than specifically relating to the relationship between officer and probationer, it became clear that some officers were reluctant to allow me to interview their clients. Although reasons given generally related to the client ('He's very difficult'; 'I don't think he'd be willing to discuss his offence'; 'I don't think he'd be suitable, he's very introvert'), I was sensitive to the unexpressed fear that, in consulting offenders in their officer's absence, I might scrutinise and damage working relationships. This problem is not unique to this research (see Worrall, 1990, P.171).

In the event, only one offender was interviewed as a result of direct contact through his probation officer, the rest of the sample being drawn from a probation activity centre, which offenders attended as a condition of their probation order; a probation hostel, where offenders resided as a condition of bail; and a probation office, where offenders reported as a condition of either a probation order or as part of their supervision on early release from prison.

Access to this sample was arranged by a senior probation officer, who contacted the personnel in charge and arranged a day when I could visit. Once there, officers approached anyone who happened to be in attendance that day, and who had been subject to a report at some stage, and asked for volunteers to be interviewed.

It may, on the face of it, seem as though offenders agreed to be interviewed in preference to performing some other task demanded of them as a condition of supervision, but this was not the case. At the activity centre probationers were involved in a variety of activities, ranging from car maintenance to swimming, which they undertook by choice and, therefore, temporarily sacrificed for the duration of the interview whilst, at the probation office, offenders were merely required to report their presence to a duty probation officer, after which they were free to leave. Similarly, although the probation hostel would appear to hold a captive sample, residents there were largely free to come and go as they pleased until eleven in the evening.

All interviews were conducted in an office, temporarily awarded to me for that purpose, and without a probation officer present. Before starting any interview, I stressed to each respondent that I was not a probation officer, but a student who was conducting research in relation to social inquiry report cases and, as part of this research, I wanted to speak to people who had had a report done at some time. I assured each respondent that the interview would be confidential and that no discussion of it would take place with their probation officer. The interviews were tape-recorded, again with the consent of the respondent.

In content, the interviews consisted of a generalised list of topics (see appendix B, document 4), but were semi-structured so that I was able to develop questions as the interview progressed, whilst:

'the subjects definition of the interviewing situation could receive full and detailed expression and elicit the personal and social context of beliefs and feelings' (Kidder,L., 1986, P.187).

In attempting to reconcile the 'text-book' goals of good interviewing technique - that is, establishing rapport and maintaining objective detachment in order to elicit information - I encountered a number of problems.

It was important, during the interviews, that the respondents expressed their views, as opposed to giving reasons for their actions, and offenders are rarely encouraged to do this. Whilst offenders are, to various degrees, socialised into adapting a passive role as they are processed within the criminal justice system, it is usual for them to be asked, urged or even obliged to give an account of their actions and the reasons for their actions. Rarely are they given the opportunity to express an opinion or even to speak on their own behalf - rather, they are advised what to say or they are 'represented' by another. In short, offenders are not socialised into being interviewees in the sense that social scientists define them.

I was conscious of the fact that my respondents had already encountered a variety of 'interrogators'. Eager not to appear as another authority figure, I made a point of wearing casual clothes during the interviews and of asking respondents' permission to smoke, in an attempt to create a less hierarchical atmosphere than they were generally accustomed to and one which was conducive to establishing rapport.

'Rapport', a commonly used but ill-defined term, does not mean in this context what the dictionary says it does ('a sympathetic relationship', O.E.D.).... The person who is interviewed has a passive role in adapting to the definition of the situation offered by the person doing the interviewing. The person doing the interviewing must actively and continually construct the 'respondent' (a telling name) as passive. Another way to phrase this is to say that both interviewer and interviewee must be 'socialised' into the correct interviewing

behaviour.... One piece of behaviour that properly socialised respondents do not engage in is asking questions back. (Oakley,A. 1986, P.35)

For their part, interviewers are not supposed to respond, the general rule being that the interviewer is there to *obtain* information. But the interviewer-respondent roles are neither appropriate nor easily maintained in some situations in that personal concerns of one party in the interaction are presented to the other. The dilemma is that of balancing the benefits of rapport against detachment.

One respondent, having assured himself that I was *not* an authority figure, expressed concerns that he thought I may be able to advise him about:

Interview Extract

Resp: ...Are you anything to do with the courts?

AP: No

Resp: Because I owe a fine, right..I got a fine about a month ago but, er, I haven't paid a penny off it yet.

AP: Have you discussed it with your probation officer?

Resp: No.

AP: Well, I'm not a probation officer and I'm not from the court - but, if you're worried about this, I think you should discuss it with your probation officer, because you *can* actually go back to court and explain that you've had difficulty in paying the fine and the court will re-assess the situation.

Resp: Like, I got it last month and I haven't paid nothing off it - like, if I tell my probation officer, he'll send me back to court and it'll be '*why*

haven't you paid?, this court *ordered* you to pay...blah, blah, blah', and they'll put me in won't they?

AP: Into custody? Well, they *can* do that for non-payment of fines, but *usually* they ask why you haven't paid first, and if you *can* make arrangements to pay - if you *can*, then, in many cases, the court will be willing to accept those arrangements - £5 a week, or whatever - but, if you miss payments *again*..

Resp: It was £8 a week.

AP: What you need to do is to go back to court and explain why you haven't been able to pay.

Resp: Because, when I was in prison, my wife left me and took my daughter, and since she left me everything's just, I've been moving all the time, I've had to find rent, it's been hard to *pay* the fine.

AP: Haven't you discussed this with your probation officer at all?

Resp: No, not yet.

I could only advise this respondent to either discuss this with his probation officer, or approach the court himself. Even proffering this amount of information to the interviewee is supposedly at odds with 'correct' interviewer behaviour, whilst respecting confidentiality meant that I was unable to approach the probation officer concerned with the case.

'Of course, the reason why the interviewer must pretend not to have opinions (or to be possessed of information the interviewee wants) is because behaving otherwise might 'bias' the interview. 'Bias' occurs when there are systematic differences in the way interviews are conducted, with resulting differences in the data produced.' (Oakley,A., 1986, p.36).

Whilst, by definition, semi-structured interviews do not routinely produce comparable responses, strict adherence to maintaining a pleasant, but business-like manner, is not always possible;

'interviewees are people with considerable potential for sabotaging the attempt to research them' (Oakley,A.Ibid.p.56).

In the example that follows, the problem was not that of 'over-rapport', or of the interviewer appearing threatening (the respondent twice declined the opportunity to bring the interview to an end). Rather, the respondent was disengaged from the process, but employed the situation to unburden his considerable personal problems. Although I persistently attempted to steer the interview on course, it was difficult to maintain a depersonalised relationship in the circumstances:

Field note extract

I interviewed 'x' at the probation activity centre, which he attended as part of his supervision on early release from custody. He had been convicted of robbery, a crime which he said he had copied from the television programme 'Crimewatch UK'. Whilst he was able to recall details of his court appearances, such as dates, he disclosed that he was unable to remember very much about the social inquiry report aspect of his case because, at the time, in his words:

'...everything about me was out of order..and I was a mess..I wasn't like I am now, I couldn't speak to people and that, and associate and that, and, er , that's it, I *wanted* to go to prison, to sort myself out...and, when I came *out* of prison, it took about another year before I could really settle down and that, and I could stand on my own two feet and that..because...when I was younger..my mother would,er, she would cut my hair and...she wouldn't cut it straight and that...and she would do that so I wouldn't be able to go out and that...and she

would make me do the shopping...the way she cut my hair I couldn't go to school, I was wagging it..and,er,...she would make me do the shopping and that, that's what girls do..and she would make me do all the housework and that...and she would gamble and she would spend all the money in the fruit machines...and then I would have to go out and steal to feed myself'.

The interview continued along similar lines, in the course of which this respondent went on to elaborate about his childhood difficulties, the abuse he suffered, and how this had eventually led to him committing offences. It was not that all of the information he volunteered (as opposed to that which I attempted to extract) was irrelevant, much of what he said was directly relevant to the study, but I later recorded in my diary that:

'This respondent was extremely difficult to interview. He was not unresponsive, but seemed disturbed. He found it difficult to stick to the questions and his answers made it difficult for *me* to do so. He was unable to look directly at me as he spoke and he rocked back and forth continually. Yet, when he was given the opportunity to terminate the interview, he twice declined to do so. I think he felt more comfortable with me than vice-versa! But I didn't feel able to ignore, dismiss or exclude what he had to say.'

In another instance, it quickly became apparent that the respondent was irrelevant to the interview sample as he had never been the subject of a social inquiry report. But he had waited some twenty minutes (on reporting to the probation office) to see me and promptly made himself comfortable and commenced to tell me how he felt aggrieved because he had not had what he saw as the benefit of a social inquiry report before being given a custodial sentence. I suppose I could, and perhaps even should, have told him that his 'services' were not required but, given the circumstances, it would have seemed offensive to have done so.

As Oakley has suggested, these problems may be generic to the interview paradigm rather than related to either interviewer or respondent and, as such, make 'the goal of perfection..actually unattainable' (Oakley,A. 1986).

Interviewing Magistrates

Access to magistrates could only be gained through the authorisation of the clerk to the justices. A senior probation officer approached the clerk initially, after which I was invited to an informal meeting with him to explain the aims of the study. Following this, I attended a probation liaison committee meeting at the court in question, where I formally addressed the magistrates in attendance.

Field note extract

'Good evening. My name is AP. I'm a postgraduate student attached to the Law School at the University of Warwick. The Probation Service have very kindly allowed me to spend some time with them, as part of the preparation of my doctoral thesis, looking at social inquiry report cases.

In practice, I have attended court at the referral stage, attended the social inquiry report interview between probation officer and offender, and then followed the case through to sentencing. My aim is to present an account of social inquiry reports within their broader context. As part of the study, I would very much appreciate a contribution from magistrates as to your own perspectives of reports.

To this end, I would welcome the opportunity of conducting interviews with some of you on an individual basis. Anything we discuss will, of course, be strictly confidential and I would like to offer assurances now that neither yourselves nor any of the individuals or cases that come before you will be identified or identifiable as a result of any interview which takes place

between us. If any of you would like to approach me at the close of this meeting, I have my diary with me for appointment purposes'.

Appointments were generally made for lunchtimes on days when the magistrate would be sitting. As the length of court sessions are unpredictable, I often spent time waiting for a respondent in the magistrates dining area. Through my initial contacts, who introduced me to their colleagues, and utilising this 'waiting' time, I was able to network to expand and, to some degree, randomise my sample.

As with offenders, the aim of the interviews with magistrates was to obtain their perceptions of social inquiry reports within the broader context of judicial process. Again, interview format was of a semi-structured nature whereby a generalised list of topics (see appendix B, document 2) was flexible enough to allow for individualised responses. All interviews were conducted in a room at the back of the court and were tape-recorded. Assurances of confidentiality and anonymity were given before each interview commenced and I requested that each respondent did not discuss the interview content with her colleagues.

I encountered fewer problems when interviewing magistrates than when interviewing offenders. Magistrates were, perhaps, more inhibited by the tape-recorder than offenders had been - probably because the latter are accustomed to having anything they say being placed 'on record'. I presented the tape-recorder to both groups of respondents as a mundane piece of equipment which was necessary to compensate for my own 'inadequacies':

'You don't mind if I use a tape-recorder do you - I find it very difficult to write and have a conversation at the same time?'

Rapport was established more easily than with the offender group. Magistrates, in all probability, perceived me as part of the court community, the observational component of the study already being well-established by the time the interviews took

place and, thus, my face being a familiarity. Ironically, for my part, the perceived greater social distance between myself and this sample made the 'ideal' of a depersonalised relationship easier to maintain. Whilst this, in itself, is a form of interviewer bias it is, perhaps, one which encourages, rather than inhibits, objective data collection.

The Politics and Ethics of Research

The ethical issues in social research inevitably arise from the

'kind of questions behavioural scientists ask to the methods they use to obtain meaningful answers' (Kidder, L. 1989, p.366).

These issues occur at every stage of the research process.

From the outset, I was aware that my presence was imposed and that this not only had implications for those 'lower down' in the organisational hierarchy of the probation service, but also had implications for the reliability and validity of data. Counteracting 'presentational' material, in turn, evoked its own ethical issues relating to role and technique. The collection of data involves both deception and power, and the text-book distinction between covert and overt methods is an artificial one - in practice, the question is not whether covert methods are employed but, rather, when and why they become necessary.

Where probation officers were concerned, gaining acceptance involved engaging in instrumental friendships, itself a contradictory term. Whilst this is scientifically 'justifiable', in practice it meant that I gained the trust of individuals in order to elicit information from them. In an interview situation, this is an overt exercise, interviewer and respondent mutually aware of the specifically engineered situation. In an observational setting, the technique is much more devious. 'Off-the-record' remarks and 'aside' comments revealed much about the organisations own value-system and

priorities. These data came from every level of personnel and were a central concern of the study at hand. A senior probation officer confided:

Field note extract

'Just between you and me, some of the worst reports are written by (PO)...look at this one...I don't know *who* did the gatekeeping, but it should never have got through...I suppose nobody wants to criticise (PO) as he's of such long-standing...but I had to have words with him...it's ageist, it's condescending, it presents a bad image of the Service to the courts, to say nothing of what it says of my allocation procedures! It's awful!'

The report in question stated that the offender had been under the supervision of an:

'inexperienced officer, who had now left the Service' and that the offender was now 'under the supervision of myself - I have twenty years experience and would not have dealt with him so leniently - in fact, had he not faced the current charge, I would have breached his probation order in any event due to his non-compliance'.

The report was referred back to the probation service by the magistrates who dealt with the case, who deemed it to be a 'bad report'.

The senior probation officer's reaction illustrated his priorities and concerns, which related to the image of the probation service and his own professional integrity, rather than to any injustice to the offender - this information was highly relevant to the study at hand.

Although probation officers were aware of who I was and why I was present, much information was covertly recorded, if freely given. Furthermore, in that some of the freely-given information was donated 'in confidence', confidentiality was breached by virtue of the inclusion of such data in the end result.

My presence was no less-imposed upon offenders via probation officers. In theory, offenders were given the choice as to whether or not I would be present at interviews between themselves and probation officers for the purpose of compiling a social inquiry report. The 'informed consent' of the offender was gained at the point of initial contact with the probation service wherever possible. Thus, I was introduced to offenders as 'a colleague' and I then requested access. Although I informed offenders that I was a student, who was

'spending some time with the probation service, looking at cases, like yours, where the court has asked for a social inquiry report',

I was sensitive to the relative freedom of choice that can be exercised in their situation. It may well have been that offenders perceived me as a probation officer, in spite of my assurances to the contrary, because I was introduced as a 'colleague'. Moreover, in some instances, I knowingly attended interviews without the informed consent of offenders. This occurred when I was invited by probation officers to attend interviews as they arose; on several such occasions I was merely introduced to the offender, at the time of interview, as a 'colleague'. Again, although I could have corrected the situation, such practices revealed much about the probation officers' own ethics and, as such, formed a vital component of the study.

Similarly, offenders were never, as far as I am aware, informed that I would retain a copy of the social inquiry report - itself a confidential document. Whilst I have respected the confidentiality, through anonymity, of all research subjects, this in itself has implications for data in that the use of pseudonyms is bound to produce a degree of distortion.

In addition to the participants of the study, some subjects remained simultaneously on the fringes of and central to the research. Various court personnel - clerks, solicitors, jailers - contribute to a contextualised account of social inquiry reports. It is interesting to note that, whilst I was always introduced to offenders as a 'colleague'

(itself a covert description), probation staff revealed my true role to court personnel who, for their part, cannot know their own contribution to the research.

I have sometimes compromised my *personal* ethics in allowing myself to be employed as an instrument of 'client control', whereby a client who persistently failed to keep appointments was, on his eventual arrival at the office, refused consultation with the probation officer, who then brought the client to the court to meet me and arrange a further, mutually-convenient, appointment. It was clear that the primary object of this exercise was to punish and control the offender when, in the clients' absence, the probation officer remarked:

'I just thought I'd bring him to the court - I know we had to consult our diaries, but I thought I'd frighten him in the process - I bet he won't fail to keep the next appointment!'

Again, I accepted this action without resistance because it complemented the aims and objectives of the study.

I refrained from intervening in probation practice in any voluntary sense - insisting from the outset, for instance, that I could not be employed as a go-between in relation to magistrates or offenders and that assurances of confidentiality would be extended to all participants of the study - but non-interventionist strategies and the notion of informed consent are, in practice, as ambiguous as the distinction between overt and covert research is artificial.

On Being A Post-Graduate

Being a postgraduate is as much a part of the research process as being a researcher is to doing fieldwork - whilst there are many accounts of researchers doing research, however, there is a paucity of information relating to being a postgraduate.

I enrolled to do a higher degree in the department where I had completed my undergraduate studies, having spent two post-graduation years working as a research associate in a different department of the same institution. An unfamiliarity with the postgraduate system had allowed me to submit a hurried and brief proposal, which granted me access to study and funding. When term commenced, the project had to be resurrected - some time having now elapsed, during which my energies had been concentrated on my employment role, rather than the trauma that, I learned from my post-graduate colleagues, is common among potential post-graduate students. It was something of a relief to be back on the familiar territory of sociology, having spent the past two years in the law school, although the readjustment in status and salary was something of a challenge.

Beginnings and endings are rarely clear-cut but, in retrospect, 'doing postgraduate research' seemed to properly begin, on the advice of a tutor, with keeping a diary. This 'file' contained:

'joined personal experiences and professional activities' (C. Wright-Mills, 1959, p.196),

consisting of formal and informal notes; references to texts I had read; notes of texts *to* read; things I had done, intended to do or failed to achieve. The 'research diary' came to be a source of reference for many things, not least for taking stock of where the project was going and how to get it there.

On a formal level, the postgraduate programme consisted of a taught component methodology course during the first year, which all students were required to attend, and which culminated in a departmental progress review in addition to the progress review that is submitted to the funding body in the case of ESRC-funded students. Students attended this course on a weekly basis, partly to familiarise themselves with research methods and partly to familiarise themselves with their fellow-students.

The course was, in my view, more successful in the latter function; as doing postgraduate research is a very individual activity, methodological strategies and problems also tend to be individual and, whilst there are benefits to pooling ideas and suggestions, many hours were compulsorily spent on irrelevant study. It is the individuality of postgraduate study, however, that gives it its isolation and the methodology course performed a social function in that it enabled students to meet with each other in, what is generally, an otherwise solitary environment.

The accountability of the progress review served as a reminder that the autonomy associated with postgraduate study is more apparent than real, and comes at a time when many students are only just beginning to formulate their ideas and strategies after sifting through the relevant literature, and when the student-supervisor relationship is often newly-established.

Supervision itself consisted, during this time, of contact by post. My supervisor had commitments abroad and, other than the occasional postcard from her or a request to submit various pieces of work I had done by post, there was little or no contact between us. I am not trying to apportion blame here, merely stating that students and supervisors obviously have other concerns in their lives than the project at hand. For my part, I became increasingly aware of where I *didn't* want the project to go, but very unsure of how it *should* now proceed.

By the beginning of the second term, my supervisor had returned - although she was committed to intermittent appointments elsewhere, usually abroad. Her return coincided with events in my own life which hindered any progress I was able to make at that time; my teenage son, a serving member of the armed forces, was on active duty in the Persian Gulf and this issue far exceeded any other concerns in my life, related to my study or otherwise.

Perhaps, given all of these circumstances, the student-supervisor relationship never had the opportunity of formulating to an acceptable, necessary or even working level.

Eight months into my studies no progress had been made in relation to gaining access to the field. This worried me a great deal. In spite of tentative suggestions to my supervisor, no encouragement - on the contrary, positive *discouragement* - was given on this issue. I was repeatedly told that it was 'too soon' to negotiate access. Yet I knew, from my previous research experience, that the issue of access could prove time-consuming (in the final event, this certainly proved to be the case).

It became increasingly clear to me that my supervisor and I had differing perspectives regarding what precisely the study should focus on and how the goals should be executed. I felt that the project was no longer my own and, worse, that no acknowledgement was being accredited to my own research skills and knowledge.

When 'constructive criticism' degenerated to the level of , what I perceived as, personal insults I reached the point where I had to either abandon the project altogether or transfer to another supervisor; with the aforementioned progress review looming there was now a sense of urgency about the whole matter.

I discussed my concerns, informally, with a colleague I had worked with as a research associate and, as a result of our discussion, supervision was transferred to the Law School.

Having held a meeting with my, then potential, supervisor, a revised research design was drafted with which I felt more comfortable. I was advised that negotiations to obtain access should be commenced *immediately*, whatever my final decision as to departmental location, and that failure to do so would lead to serious delay in the research and threaten the overall timetable. I was told that, unless access was secured soon it would be difficult, if not impossible, to complete within three years.

For the first time since the commencement of my postgraduate study I felt a sense of confidence, both in the project and in my ability to carry it out. But at this point, I unwittingly became embroiled in inter-departmental politics.

Whilst I set about making a 'fresh start', the two supervisory personnel now involved liaised with one another and my official supervisor unofficially agreed to support the transfer. A few days later, I noted in my research diary that I was summoned by the Head of Postgraduate Studies in sociology:

Research diary extract

'I saw (Head of postgraduate studies) today, who asked me to wait outside his office whilst he took a phonecall from (my supervisor), who is abroad again. Effecting a transfer is 'not the problem', I am told; it seems 'the problem' is justifying how and why the research has changed direction and supervisors. Apparently, (my supervisor) has agreed to 'do what is required' and, in the meantime, I am to 'get down to a solid months work' with (my new supervisor), beginning with the essay for the progress review, which (Head of postgraduate studies) says should consist of half a page relating to the first nine months of study, the remainder and bulk of it focussing on how the research has changed'.

On the same day, my 'new' supervisor also received notification that the above meeting had taken place - that I was supplied with copies of all relevant correspondence signifies the quality and equality of the relationship which existed, even at the preliminary stage, in the newly-founded student-supervisor relationship. Posed in somewhat different terms to the way I had perceived and recorded the meeting, notification addressed to my supervisor contained a subtle warning for each of us:

'Anita has been to see me about transferring her ESRC supervision to you. As far as I am concerned there is no problem about such a transfer, and I will check out the procedures with ESRC.

The substantive questions which arise over the next month are those of the Departmental progress review and the supervisors report to the ESRC. I have said to Anita that it is best to let bygones be bygones, and to get down to work with you as soon as possible. We would want her to complete our taught programme, which means completing the progress review, but it would be a waste of time to do this in relation to her work with (supervisor). Having lost time, it is also clearly important that she gets down to planning her work, especially her fieldwork, as soon as possible. I have said to her that I think it best, if it suits you, for her to concentrate in her submitted work, on the programme she intends to undertake with you.

We, and (supervisor), are quite happy to make a positive recommendation to the ESRC for the renewal of Anita's grant, as long as you are happy to support such a recommendation in the knowledge that responsibility for completion then devolves onto the Law Department!

Overall, I think the best way forward would be for Anita to start work with you immediately, and to get enough done over the next month to convince you that we can confidently recommend the renewal of her award.'

From this, it was clear that both the informally arranged transfer and the renewal of my student grant was to be dependant upon satisfying the Sociology Departmental Review and that these conditions carried the overriding implication that I was an unreliable at best, inadequate at worst, student who the Law School would be burdening themselves with at their own risk. No mention was made at all of the failed student-supervisor relationship and the role *it* played in these manoeuvres, yet recent research, established by the ESRC's Training Board, shows that:

'Strategies and tactics for supervision vary widely..no doubt as a result of the lack of formal training experienced by supervisors...In the end, the role of the supervisor structured the student-supervisor relationship_and the degree to

which the expectations of both had been met was fundamental to their relationship and progress in the first year'.⁴

A few days after my meeting with the Head of Postgraduate Studies in sociology, I received a letter from my sociology supervisor, by air-mail, as she was abroad again, which, for me epitomised our relationship:

'We have an appointment to meet on (date). I don't know whether you were intending to keep the appointment but obviously we do need to meet.

Unfortunately, I have to go to London that afternoon, so I need to alter the time we meet. I already have several meetings that morning, but perhaps we can meet at 9am. It may in any case be useful to see you before the progress review starts. I am still expecting you to fax me your chapter outlines unless, of course, (law) has taken over supervision already.'

I had no further contact with my sociology supervisor, other than to inform her that supervision had now been taken over by the law department.

Over the next few weeks, I was frequently summoned by the Head of Postgraduate Studies in sociology and, during the course of these meetings, it became apparent to me that the, now, hostile environment was not due to my transferring supervisors but, rather, to transferring departments; given the prevailing attitude of the sociology department, I can only assume that this was because any postgraduate funds would be transferred with me.

Before the transfer was formally effected, I had to complete the usual progress review to ESRC, which includes a section relating to the student-supervisor relationship. Sociology made one final condition, that I complete this section in relation to my sociology supervisor and that the Department read through it before it was submitted to ESRC.

It was with a mixture of sadness and relief that I abandoned sociology; any feelings of loyalty to my undergraduate department were also, if reluctantly, abandoned.

It is difficult not to personalise what were, I am sure, political negotiations. But what is personal is not necessarily unique. I later took comfort in the words of other academics who, like myself, had experienced the frustrations of the 'system' or the indifference of a 'supervisor':

Bill Bottomley, in describing his experience of 'words, deeds and postgraduate research', states:

'While I was going through these preliminary stages of sorting out a viable topic I felt inadequate, a bit flighty and scatter-brained even...My own feeling of urgency was reinforced by the solicitous queries from friends and colleagues: 'How's the thesis coming along?..'and so on. The questions were genuine enough, but they heightened my awareness that I was completing a *package*....In other words, I realised that whether or not you get off to a good start depends a lot on luck. What strikes me as interesting, in retrospect, is the way people viewed my tardy topic as a problem, as though I were opting to handicap myself, in effect. It seemed as though there was more concern for the smooth passage of my *degree* than there was for the progress of any *ideas* in the research itself.'⁵

Like Abel (1981), I now question the amount of time and energy I dedicated to the initial formulation of the project and, in retrospect, can see that I should have reformulated it much sooner,

'Yet, if changes of direction are not mistakes, but simply paths begun and later abandoned, a retrospective criticism of the way in which my research evolved ... may still be helpful to others confronted with similar dissonance between intent and execution' (Abel, 1981, p. 67/8).

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Chapter Five

Formal and Informal Relations

We have seen how the role of the probation officer and the function of reports has evolved in relation to competing paradigms and their related practices that have been imposed from the 'top down'. The study aimed to unravel the operational meanings of this to probation practice at a variety of levels relating to the compilation and construction of probation reports in criminal cases and the implications of this to the wider administration of justice.

This chapter will examine the ways in which court relations operate, on a formal and informal level, to both inform and constrain probation practice in relation to the process of report compilation.

Referral Procedures and Court Relations

Probation reports in criminal cases can only be compiled with the consent of the offender. The purpose of the report is to contextualise offence and offender with a view to assisting the court in reaching an 'appropriate' sentencing decision, rather than to merely conduct enquiries and present the outcome of these as facts to the court. Because the aims of the report are, in this sense, subjective, the process of social inquiry requires offenders to engage in and co-operate with social relations as part of report compilation. Before this process can properly begin, indeed as a pre-requisite to it, there is a requirement that the court obtain the consent of the offender that a report be compiled. Whilst this requirement suggests a parity of status in the social relations of inquiry it is, in reality, an instrumental strategy that holds clear benefits for the court and its agents because the notion of consent places co-operation on an operational basis within this process. Moreover, if consent is not 'informed', what appears to be co-operative becomes coercive. So why do offenders consent to reports? Is their decision to co-operate informed and, if so, by what?

When asked why they thought a report had been suggested in their case, all the offenders interviewed related report requests to a form of social work intervention, aimed at diversion, based on a legalistic model informed by the seriousness of the offence they had committed, their record of offending and related likely means of disposal:

Interview extracts

'They wanted to know about my background because they were thinking of sending me to prison'.

'My PO suggested a report because I was already on probation and I thought I'd go to prison, because I've got terrible form'.

'(The magistrates) wanted a report because I was on the verge of going into custody'.

'It was my first offence, but the magistrate had said I *would* be going down for it. But my solicitor asked for a report - I think, basically, to let the magistrate know about myself, how I was fixed and that, also to see if I was suitable for probation instead of anything else I suppose'.

'They (the magistrates) wanted a report because it was a bad offence. The report was to try and get me off, like'.

'It was to keep me out of custody'.

Perceived threat of a custodial sentence was the most influential factor that led offenders to agree to co-operate with report compilation. As the preceding quotations illustrate, this 'threat' was presented to offenders by various agents in the judicial process. In order to evade a possible outcome of the case, offenders were 'informed' that '*they*' wanted to know about them. The decision to co-operate with report compilation was thus a rational and positive one. But, in that it was a decision taken

largely by others on their behalf, the 'consent' of offenders to reports was extracted, not given, and therefore amounted to a coercive measure in already negative circumstances.

Because the sample of respondents consisted of offenders who had consented to reports in these circumstances, the study cannot comment upon the circumstances in which offenders' actively withhold consent. Rather, I can only illustrate the relativity of 'voluntary consent' in these circumstances and, from this, to indicate the associated difficulties and potential inability to withhold it.

Since their decisions were 'influenced' by legal agents, it is not surprising that offenders' perceptions of the purpose of reports was consistent with 'official' definitions - that is, as something aimed at contextualising offence and offender in order to administer the 'appropriate treatment'.

'When requesting a PSR on adjournment, a sentencer may give a preliminary indication of his or her view of the seriousness of the offence and the sentence which may be appropriate. Such a view will set a starting point for the preparation of the report' (National Standards For The Supervision Of Offenders In The Community, H.M.S.O., p.14).

Information relating to report requests was transmitted within the service via PAC 1 forms (see appendix B), which probation personnel completed in consultation with the offender and other court personnel at the request stage.

PAC 1s contained basic details relating to the offence, preliminary indications of appropriate sentence, and the date and place of sentencing, as well as personal details relating to the offender, such as personal circumstances and availability for interview.

A typical referral form read as follows:

Notice of remand for social inquiry report from (named) court on (date) to (named) court on (date).

Mr Smith, Address, Date of birth.

Solicitor (name).

Offence(s); Driving whilst disqualified, no insurance.

Guilty plea.

All options to be considered.

Previous convictions; (date), driving with excess alcohol. Disqualified 12 months.

Living with wife and two children. Unemployed. Available for interview anytime.

In cases that I attended, it was also stated that the client was 'agreeable to my presence at interview'.

Although a, seemingly, administrative procedure, the quantity and quality of information recorded at the request stage reflected formal and informal court relations.

It was, for instance, considered good practice to call the duty probation officer into court when the report was requested. When 'good practice' was followed, referral procedures were relatively routine affairs. But this did not always occur. In the following case, the court duty PO had not been called into court when the report was requested.

Notice for remand for social inquiry report from (named) court on (date) to (named) court on (date).

Mr. Smith. Address. Date of birth.

Solicitor (name).

Offence; grievous bodily harm.

Guilty plea.

Previous convictions; none.

Client was interviewed after court. Sorry about lack of information - only by chance that I found out SIR was required *from the usher* - although I was apparently called over the p.a. I never heard this and, in *another* case today I had to rely on information from prosecution and defence. The court sitting was trying a not guilty plea and I couldn't get to the clerk to find out what magistrates thoughts might be over sentence (emphasis in original).

This breakdown in communication presented considerable difficulties to the court duty officer who, being unable to follow any preliminary indication from sentencers in such circumstances, became reliant upon informal court relations to obtain the necessary information relating to the offence or, when this was not forthcoming, the defendant himself. This procedure was considered unsatisfactory because it both marginalised the court duty PO and potentially placed PO credibility at risk.

Sentencers' preliminary indication of sentence was considered relevant because it properly formed the starting point of the written report. Although 'good' reports were not necessarily defined in relation to this reference point, 'bad' reports were those which, from the perspective of magistrates, contained inaccurate information. 'Bad' reports, therefore, undermined PO credibility in the eyes of the court. In that they were properly employed as the starting point of the final document, any inaccuracies contained in referral procedures were, potentially, carried through to sentencing.

As such, PAC 1s formed a vital component in the maintenance of PO credibility in that they contributed to the final product through which this was assessed. The information these documents contained, however, was strongly influenced by court relations and contained a hidden qualitative agenda which contributed, very

substantially, to the final report and, in turn, to sentencing practices that were selective and subjective as opposed to comprehensive and objective.

Signals From the Bench

Rather than a straightforward indication of appropriate sentence, report requests often contained 'coded' messages from the bench. 'All options' was a phrase, widely employed by magistrates when requesting reports:

Mags: We feel we need reports in this case on the next occasion.

Clerk: Should the SIR address all options, Sir?

Mags: Yes, and in the question of the driving whilst disqualified, we'd like the alcohol situation looked at.

Interviews with magistrates revealed that this, and other signals (i.e. 'the bench will not be tied by the recommendation of the report') were employed as mechanisms to safeguard sentencing practices against appeal:

Mag: That kind of codification of language tends to be adjusted by something that has happened in the court of appeal or in a higher court, where something the magistrates have done has been appealed by the defendant and his lawyer and it's been ruled that there was some element of unfairness in the sentencing that related to the report. It might be found that there was something in the way that the original court ordered the report that led to a very clear expectation of sentencing and, when that is not realised, there is a feeling on the part of the defence that they were at an unfair disadvantage in that they were unprepared.

Whilst any miscommunication was, therefore, important to magistrates credibility, these signals were also converted into probation practice in a number of ways.

Messages and Manoeuvres

Deciding what recommendation or assessment to make on the basis of information transmitted by the bench, either directly or through the PAC 1, before the client had even been interviewed was not unusual. In the following example, two co-defendants appeared for sentencing. A report on each defendant had already been submitted.

Having heard the case, the sentencing magistrates indicated that they were minded to impose community service orders on both defendants, but only one defendant had been assessed as to the likelihood of him complying with such an order. The case was stood down so that it could be determined whether or not the second defendant was also likely to comply with the indicated disposal. The court PO attempted to contact the report-writer concerned with the case, but to no avail and, in approaching another PO, suggested outcome of the assessment before there had even been any client-contact:

Fieldnote extract

PO: Well, the magistrates obviously want community service, so I suppose it will be a positive assessment.

In this particular case, both defendants were sentenced to 84 hours community service, even though the initial recommendation for one defendant had been that a suspended sentence be imposed, this being submitted on the grounds of the client's lesser involvement in the offence than that of his co-defendant. I remarked on the outcome of the case to the court PO:

Fieldnote extract

AP: That seems odd doesn't it?

PO: It's an odd number of hours for one thing.

AP: I meant it seems odd that they received the same sentence when one defendant was less involved than the other.

PO: I know. The defence solicitor asked me why the report had recommended a suspended sentence at all if his client was perceived to be 'on the periphery' - but I told him, it was because the magistrates said they were considering custody when the report was requested.

Thus, POs were willing to compromise their initial judgement to conform to the desire of the court even when this was not, therefore, necessarily perceived to be in the interests of their client. This practice not only raised questions about the function of reports, as an aid to sentencing decisions, but also held implications for the role of the report writer in relation to both the client and the decision making process as well as to the wider administration of justice.

As we saw in the previous section, an indication of magistrates' views as to appropriate sentence properly formed the starting point of report compilation.

Probation officers interpreted 'all options' to mean that the bench were 'considering a custodial sentence'. This was not necessarily an accurate translation. As one magistrate put it:

Interview extract

Mag: If you say you're considering community service and then the sentencing bench impose custody, an appeal judge might say that you really did offer this chap community service. Because that type of language created an opportunity to launch an appeal the code was changed to 'all options'. Of course, when the report came back from the probation officer you knew jolly well that you would not get a recommendation for prison - and you were not necessarily considering it anyway.

Because preliminary indications of appropriate sentence were informed by an awareness, on the part of the requesting bench, to safeguard their decisions and, thus, their credibility, against appeal most requests were phrased in terms of the 'all options' code. An interpretation of this by the report writer to mean 'considering custody' and the formal requirement to employ the signal as the starting point of the report meant that, in effect, sentence recommendations constructed, as Hardiker (1979) suggested, according to a 'tariff minus one' equation were potentially pitched too high given that they began from the highest, rather than from any 'intermediary', point on the tariff continuum. Whilst this phenomenon is somewhat reduced by the requirements of the Criminal Justice Act, 1991, to emit a more specific signal, relating to the seriousness of the offence, when requesting reports this does not eliminate, and might even perpetuate, the introduction of sentencer bias into reports through the formal obligations of report writers to acknowledge the indications of sentencers and their informal predisposition to do so.

But whilst signals from the bench relating to the function of reports informed, if not controlled, POs role in decision-making, these messages were also translated into Manoeuvres that were employed by POs as a strategy of client-control. This occurred immediately following the court's request that a report be compiled, when the PO approached the offender in order to complete the PAC 1. At this stage, the officer's interpretation of 'all options' was sometimes disclosed to the client and, simultaneously, employed as a technique of client-control:

Fieldnote extract

PO: A probation officer will write to you with an appointment for an interview - now, it's very important that you keep the appointment, because the magistrates have said that they are considering all options, which means they may be thinking of custody, so it's most important that you see the probation officer.

Given that defendants, as members of a 'muted group' (Ardener, 1978), are largely excluded from the linguistic codes of court-room practice, it might appear from the above exchange that the PO was acting in the clients' interest, rather than exercising control, but this was contradicted on one hand by probation officers' tendency to employ the court setting, in a general sense, as a tool of client control and, on the other, by POs own alignment with the court.

Perhaps not surprisingly, the study found that it was common practice for probation personnel to employ the court as a means of client-control:

Fieldnote extract

PO: It's very important that you attend the interview, if you don't the court may remand you in custody on the next occasion for the report to be done.

Although I never witnessed any defendant being remanded in custody purely because she had failed to attend a report interview, this technique was routine practice.

In this way, the systems context of reports fed into officer/client relations and represented one component of client-control strategies. But this was indirectly imposed on officer/client relations through the POs obligations to the court. This called into question whether the care-control model that has been applied to other areas of probation practice was appropriate to the area of report compilation for, whilst it acknowledges the basis of officer/client relations, it had a limited application to the relationship between the PO and sentencers. This relationship has both an historical and formal foundation that has more to do with deference and dependence than with care and control.

Deference and Dependence

Just as an indication of magistrates' views as to appropriate sentence properly forms the starting point of report writing, probation officers' alignment with the court is an integral part of their official role. The general statement of the duties of probation officers in relation to social inquiry reports is as follows:

"It shall be the duty of a probation officer to enquire in accordance with any directions of the court, into the circumstances or home surroundings of any person with a view to assisting the court in determining the most suitable method of dealing with his case'. This requirement, and the substantial range of other statutory direction and advice that are based upon it, embodies the essential function of the probation service in relation to the work of the criminal courts. It is this requirement which makes the probation officer an officer of the court ... It confirms the functions which probation officers have had since the earliest days of the probation service" (Jarvis, 1987, p.91).

This alignment with the court produces a theoretical conflict of interests that arises out of the officers' desire, on one hand, to influence the court towards a more lenient sentence because of an alignment with the client and the need, on the other, to maintain their own credibility in the eyes of the court. This set of circumstances is not peculiar to report writers:

'Defence solicitors often have to strike a balance between three different, and often contradictory objectives. First of all, defence solicitors have to legitimate themselves in the eyes of their clients by being seen to speak on behalf of the client. Second, as practitioners dependent upon legal aid, they need to generate volume business and to turn cases around quickly so that other cases can be handled in the interests of achieving economic viability. Third, as court-room regulars, they need to retain credibility with the court

itself in order to continue as effective workers in the daily business of processing defendants' (McConville et. al., 1994, p.201).

Like defence solicitors, probation personnel adopted various strategies designed to minimise or conceal conflict. Both of these court-room actors employ particular images of the client based on models or typologies that, because they are acknowledged by or attractive to the bench, are likely to generate success in terms of outcome. But whilst solicitors and probation officers are, to various degrees, captive to the social norms of the court, probation officers are less restricted in relation to their clients. Because probation officers do not have to generate business through client-recruitment and because their reports are not read out in open court, they have no need to maintain an image through address to the public gallery and a reduced need to legitimate themselves in the eyes of clients. Unlike defence solicitors, probation officers were able to selectively screen out or abandon defendants in the public arena of the court-room and to confine their address to a specific audience.

In practice, officers adopted various strategies of prioritisation designed to balance conflict. We have already seen how POs were willing to compromise or defer their own judgement to conform to the wishes of the court when this was not necessarily perceived by officers to be in the best interest of their client and how assessments were made in the absence of consultation with the client. From these and other examples of practice it became clear that probation personnel attempted to manage potentially conflictual situations by adopting a strategy of prioritisation of interests whereby the court had elevated status. Consequently, clients became incidental, rather than central, to the report process. It was not only formal relations that were operational here. Prioritisation occurred on a number of different levels. In the following case, the defendant had been convicted of cheque-book fraud and, again, a report had been submitted, recommending that the defendant be placed on probation. The court, however, again indicated that they were minded to impose a community service order and stood the case down for the necessary assessment as to the

defendant's suitability for such an order. The defence solicitor was opposed to this and stated as much to the PO assigned to do the assessment:

Sol: I shall strongly oppose this, community service is too high-tariff - she has no previous convictions, it's an excellent report and I think the recommendation is correct.

PO: Well, I shall say that I agree with the recommendation of the report, but that she *is* suitable for community service.

This prioritisation of formal (the court) over informal (the solicitor) relations effectively marginalised the defendant.

As the court is an integral part of the POs official role and the solicitor is not, it might appear that prioritisation did not occur in this instance but, in fact, informal court relations formed a vital component of probation practice.

Dependency on informal court relations extended, in some degree or form, to almost everyone involved in the court process. Good relations with prosecution and defence lawyers, who were not *obliged* to reveal their case files, formed an essential part of the court team's work.

It was also common practice for court ushers to obtain and note results of cases and pass on the information to probation personnel who, numbering only two in a six-court setting, were unable to cover all courts. But the importance and invasiveness of informal court relations became clear when formal communication's systems broke down.

During the transitionary period from SIRs to PSRs some confusion arose relating to the appropriate indication of sentencing:

Fieldnote extract

PO: It makes you wonder if (magistrates) are worried about PSRs - they don't know *what* they're doing - someone asked for a SIR last week, so I stood up and said, 'it will be a PSR, Sir, if the bench could give some indication as to which sentencing band they have in mind according to level of seriousness' - well, I may as well have been speaking in a foreign language - he just said, 'thank you' - it was hard not to smile.

But, whilst some degree of confusion was inevitable during this period of adaptation, lack of information sometimes reflected a breakdown in court relations, as opposed to communication. When this occurred, POs employed informal court relations as a safety mechanism, as in the following case.

Mr. A had been prosecuted by customs and excise for exporting heroin. Having been convicted of the charge, his case was adjourned for a PSR to be prepared. The PO had not been called into court until after the case was dealt with and, consequently, had no signal from the bench in relation to sentencing. The prosecutor, a customs and excise officer, had already left, so the PO was unable to consult the prosecution file in order to note details of the offence on the PAC 1 form. The offender had also been released on a successful bail application. Having no other means of obtaining details, the PO consulted the defence solicitor and the court clerks' file, but was forced to note on the PAC 1:

'Customs and excise were prosecuting this and as I was called in at the end of the case, the prosecutor had gone. The court could give me no further details and the defence stated it was serious as it concerns £1300 of heroin. I believe the defendant is unemployed, but he was released before interview!'

Similarly court clerks, although supposedly impartial, sometimes adopted interventionist strategies which modified the information contained in the PAC 1, as in the following case.

Mr. B's case had been adjourned for a PSR, but the PO had received confused signals from the bench as to indication of sentence.

PO: This PSR request - the bench said they were considering custody, so I've spoken to the clerk - I said, 'they're supposed to indicate level of seriousness' - and he said, 'well, they obviously want community service' - so I said, 'well, they should give a proper indication so that I can state it on the PAC 1' - and he still said, 'well, they obviously want community service'. So I've marked the PAC 1 as 'so serious' (as to warrant a custodial sentence).

In fact, the referral form read:

'Magistrates say they consider custody may be appropriate in this case (clerk says a community service order assessment should be made).

This was by no means atypical. In another case:

Fieldnote extract

PO: I've had a PAC 1 that says 'all options' - so I rang the (referring) office and said, 'all options doesn't apply to PSRs, indications have to relate to seriousness and sentencing band' - the PO went to have a word with the clerk, called me back and said, 'the clerk said, just between you and me, they're thinking of community service'.

Because any breakdown in communication filtered through to the report writing stage via referral forms and, from there, back to the systems context at sentencing, 'getting

reports wrong' or right was dependent to some degree upon formal and informal court relations. As such, probation court personnel had a crucial role, through their strategic position, in the task of maintaining credibility, simultaneously, within both the organisational and systems context of reports. Commenting on a case where she had been unable to obtain the required amount of information, one court PO stated:

Fieldnote extract

PO: This makes me fuming - we're told to get as much information as possible for the PAC 1 and it looks as if I'm not doing my job properly when, in fact, it's a lack of co-operation between the court and the service.

In order to 'do their job properly', probation court personnel were, as we have seen, dependent upon securing and maintaining good formal and informal court relations. Although fieldwork officers were employed on a rota basis to conduct court duties, this was perceived by the regular 'court team' as a specialised, and largely unrecognised, role. In attempting to resolve the ambivalence this role contained, the court PO sought the advice of her Senior at a team meeting:

Fieldnote extract

PO: What are we supposed to do when the clerk lays down the law?

Snr: Well, we don't really want to upset the court - it could make things difficult for ourselves - we had enough public disapproval with that case where the magistrates said in open court that he considered it 'disrespectful' to the court that the case wasn't prepared on time.

PO: What *do* we do then?

Snr: You'll have to play it by ear - we don't want public disapproval or power contests with the clerks - use your own judgement.

Defending the Image

Power contests were rare. Probation seldom challenged the court. In the following case, the client had been found guilty following a trial, but maintained his innocence when interviewed by the report writer, who commented on the case after the client had left the office:

Field note extract

PO: It's always difficult, he refuses to accept the court's decision and, therefore, I can offer no analysis of his offending behaviour.

AP: Do you think he committed the offence?

PO: I don't know really ... but I'm not here to challenge the court.

The PO was correct in his assertion that challenging the court was outside the realms of his duty, but illustrated that, because not challenging clients' version of events amounts to challenging the court, his legitimate role and court relations effect client relations. That the client was subsumed beneath PO credibility maintenance, produced its own tensions at the interactive level (discussed further in chapter 6), but any confrontation that occurred within the systems context was generally aimed at defending this role and, as such, the role of the PO incorporated a process of prioritisation into its definitional and operational boundaries that was employed as a strategy to assert and maintain credibility.

Because the probation image reflects that of the court, maintaining it was dependent upon the reinforcement of that image through the co-existence and co-operation of formal and informal court relations which, in turn, should not undermine it. When this was not the case, conflict occurred.

The process of referral was not only subjective, but also selective. Reports are compiled between the conviction and sentence of *some* offenders. The reasons given for report-requests vary:

Field note extract

Def Sol: A SIR could look at all the possibilities available in order to assist him and help prevent him re-offending in the future.

Mag: We are going to adjourn this case for a SIR because of the seriousness of the assault.

Mag: Because of the seriousness of the charges, we feel that we'd want reports in this case in order that we have a clear chance of making the right decision.

Requests from defence solicitors were commonly presented in terms of their clients' interests, whilst magistrates tended to request reports in relation to their official function as a sentencing aid. As such, differing strategies reflect differing roles which, perhaps, incorporate differing, although not necessarily oppositional, ideologies. Probation officers rarely requested reports personally or directly. Rather, probation requests for reports were influenced by and took their directive from the wishes of the court.

In the following case the clerk of the court approached the court probation officer regarding a defendant, convicted after a trial, who was already on probation for previous offences. The court had stood the case down in order to direct probation personnel in relation to a report. The court PO consulted the defendant's case worker, with whom the client had failed to maintain contact because of outstanding warrants for his arrest in relation to fines arrears. In spite of this, the case worker instructed the court PO to request a SIR, who then addressed the bench:

Field note extract

PO: I have consulted the PO involved with this defendant, Sir, and she feels that she and the court would benefit from a report in this case.

If different strategies reflect different roles and ideologies, it would appear from the above address that POs adopt the role and ideology of the court, the report request being presented as an alignment of interests between the court and the probation officer, rather than the defendant, who, in turn, is presented as incidental, rather than central, to the process. Although this may be a tactical move on the part of the PO, it again illustrates conflict management through prioritisation. Similarly, any conflict that occurred between the court and probation was neither necessarily nor usually client-related, but more often related to maintaining the image of probation and, thus, credibility, in the eyes of the court. This required a selective strategy in relation to clients which sometimes conflicted with the selection of defendants exercised by the court.

In one such case, the defendant was a diagnosed schizophrenic, who had spent some time on remand awaiting reports and sentence. At sentencing, the defence addressed the court in these terms:

Field note extract

Defence: — First of all, that you deal with him by way of a custodial sentence that will expire today and, secondly, in his fairly recent past, he was bailed on condition that he did not go to (the shopping centre) where he commits these offences and, surprisingly, it worked - he stayed away and didn't re-offend. The report doesn't say *anything* about what probation can offer, but it is possible to make a six month probation order to allow the Service to check if he is taking his medication and to couple that with an order that he doesn't go to (the

shopping centre) save to cash his giro - because it is just possible that that would stop his cycle of offending and ensure that the causes - that is, the lack of medication - do not happen.

Clerk: Perhaps I can advise you in open court about incorporating the conditions of such an order - I don't see any problem - you may require him to comply with conditions for the good conduct of the offender and if there is a condition to keep away from (the shopping centre) you *can* impose that. You must consider, before such an order is made, the background of the offender 'to refrain from participating in certain activities under a probation order' - and you need first to consult with a probation officer as to the feasibility of securing compliance.

At this stage, the PO rose to address the court:

PO: Sir, it is an interesting thought - it is certainly a *possibility*, and a *negative* condition - to refrain - which brings about immediate practicalities - would he be refrained from entering the probation *office* in (the shopping centre)?

Clerk: No, I think (the defence) had in mind that he would not enter shops.

Defence:  This is correct.

Clerk: So he *would* be able to go to the probation office.

PO: There is one other thing - I feel I am unable to speak on behalf of my colleagues - such an order would depend on *their* links with other agencies, such as security forces and the police - and I would need to make a phonecall to my colleagues about that. The other thing in the back of my mind is the problem of ensuring continued medication.

Clerk: Yes, that *would* need a doctor's report.

PO: Yes, without that probation couldn't supervise medical treatment - my colleague's report is dated over a month ago and I assume that there has been no further consultation with the defendant.

Sensing that the PO was about to request a further adjournment in the case, the clerk then asserted the collective wishes of the court, which in this instance exclude probation:

Clerk: There is a collective will to finalise matters today.

PO: I'd certainly like to be able to consult my colleagues.

Although the court conceded to stand the case down for enquiries to be made, and in spite of protest from the PO in court based on those enquiries and the associated perceived practical implications of the suggested sentence, a probation order with conditions that the defendant undergoes medical treatment and does not enter shops in the defined shopping centre was imposed through the assertion of the 'collective' will of the court and the relatively marginal status of the PO:

Field note extract

Clerk: As far as medical treatment is concerned, (the court) can impose a condition for part or duration of a probation order that (the defendant) receive treatment to improve a medical condition, either as a non-resident or resident patient of a medical practitioner - you need to be satisfied that arrangements have been made in respect of the treatment - I don't think there's any problem with that.

✱ Defence: ←— I have spoken to (the doctor) - he assures me that he will send an appointment and he has no objection to an order.

Clerk: Excellent. One of (the doctor's) statements covers the legal requirements - it clearly enables the condition to be made - we thus come back to the probation service to see how *they* feel.

PO: Sir, my colleagues are very sceptical of two things. One is that contact with (the defendant) at the report interview stage proved *very* difficult and, at the present time, we have no other experience of him and would, therefore, like time to bring ourselves up to date. My colleagues also feel it would not be an easy task to supervise the type of order you propose and, having not had particular experience of such an order, would like to meet (the defendant), discuss the situation with him and set a more complete package to the court. I can arrange an appointment for him *today*.

Mag: I think we're inclined to go ahead with the order today.

The failure to successfully challenge the court was directly related to formal and informal court relations. Although there is a statutory obligation that dictates that court-room practice should consult a probation officer with regard to the 'feasibility' of enforcing a probation order, the 'collective will' of the court assigned the officer marginal status in relation to, and, therefore, a passive role in, the decision-making process - a situation compounded by the report writer's non-adversarial role in an adversarial setting. Such collaboration, or lack of it, might be an influential factor in determining whether or not reports are 'followed' (see chapter 7). For their part, probation personnel in this case employed the same strategy to challenge the court as that which was employed, in other cases, to align themselves with the court - that is, abstention. In the words of the defence solicitor, the report did not say anything about what probation could offer.

Probation did not offer anything in this case because, to have done so was perceived as potentially damaging to credibility. To put it simply, credibility depends upon

success and success depends upon selecting the right clients for the 'appropriate treatment'. Because the offenders' perceived unwillingness to, or incapability of, complying with supervision might be interpreted by sentencers, in the perceived inevitability of breach, as the incapability of the Service to enforce an order of the court, maintaining credibility in the systems context involved a screening process whereby some clients were excluded from supervisory disposals. This process did not reflect the selective process of the court adopted in its referral procedures but, rather, competed and was in conflict with it. As such, PO credibility should be properly analysed in relation to client credibility. Whilst more space is awarded to this aspect of probation practice in chapter 6, the relevance of this here is reflected in the court duty POs comments to a colleague during the case:

Field note extract

PO: He'll breach (the proposed order) straight away ... they've set us up to fail ... they are determined to go ahead no matter *what* I say.

Being 'set up to fail' contradicted probations' alignment with the court. This, in turn, involved a degree of client categorisation, whereby, as in this case, some defendants were deemed unsuitable. The client, although crucial, became secondary in these instances to the primary objective of maintaining credibility and the successful challenge to any conflict that did occur was primarily related to the ability to assert the status of probation within the broader context of court relations.

Misleading the Court

Although these processes could disadvantage probation clients, they sometimes operated to their benefit. In the following example, a defence solicitor had informed the court, as part of a bail application, that probation had secured a place for his client at a bail hostel. As a result, the bail application was successful. The court PO had no knowledge of the arrangements, however, and she challenged the solicitor outside the

court, where it transpired that a PO from another area had secured the hostel place, but that the defendant in question had also committed offences whilst on bail. In court, the prosecution had no record of the bail offences and the defence took advantage of this lack of information to assist the bail application. Although, from the perspective of the defence, this strategy was quite legitimate, the PO viewed it very differently. As she explained to me:

Field note extract

PO: I'm really annoyed - he would never have got bail if the truth were known - the court have been misled into believing that I secured the hostel place, it puts me in a really compromising position.

Research into the work of defence solicitors indicates that, as officers of the court, they are not unwilling to mislead the court where they consider it appropriate to conceal or misstate information (McConville et.al., 1993, pp. 207/8). That POs were reluctant to adopt this stance reflected, in part, the statutory obligations of a non-adversarial role, which afforded POs a marginal status within the court setting, but it also mirrored conflicting components within that role:

Field note extract

PO: We're trained alongside social workers, but we've lost our social work function - or, rather, we've had it taken away from us - we've become nothing but controllers and supervisors - I've lost sight of our role really. The social work side has gone as we've become increasingly specialised. We've become firmly located within the Criminal Justice System. We're just controllers now.

Any willingness, on the part of POs, to mislead the court usually occurred for 'social work' reasons. Thus, during an interview with a homeless defendant regarding

arrangements for a bail hostel place, the defendant informed the PO that he had failed to surrender to bail at another court. After the interview, the PO commented to me:

Field note extract

PO: *That* was hard work - he doesn't seem to be with it - I wonder if he's on something, or maybe he *is* just tired, he looked tired. I wish he hadn't told me that he'd jumped bail.

The PO arranged a hostel for him and then spoke to his solicitor:

Field note extract

PO: I've arranged a hostel place - his offence doesn't really warrant a hostel place - I have to tell you that he said he's jumped bail to (another) court.

SOL: He didn't tell *me* that!

PO: Well, I wish he hadn't told *me*, but he did, so I'm telling you - I shan't say anything in court, it's up to *you* what *you* say.

SOL: I won't say anything unless he tells *me*.

That any willingness to mislead the court occurred for 'social work' reasons may have reflected a practical strategy in redressing the ideological balance of care and control at the systems or structural level from which it emanates but, although in this instance the PO and the defence colluded to mislead the court to the benefit of the client, motivations were not always or necessarily client-centred. Similarly, POs were also willing to compromise some court relations in order to assert their own position.

In one case, the magistrates had instructed the PO to enquire about a probation hostel place for a defendant whose case had been adjourned for reports. The defendant

seemed to be in a depressed state and had stated in court that he wanted 'to go to prison'. The defence had mentioned 'medical problems' to the magistrates.

Field note extract

PO (to AP): I saw (the defendant) in the cells this morning and could hardly get two words out of him. (Defence) didn't say anything to *me* about medical problems - nice of her to lay it at *our* door I must say!

The PO made only a half-hearted attempt to secure a bail hostel place and reported back to the magistrates:

PO: I have contacted several bail hostels, Sir, there were no vacancies at three and another one, which *does* have vacancies feel unable to take him due to the lack of information in this case and what I have been able to tell them of the offender and the circumstances - they *do* have other residents to consider, Sir, and don't feel they can take him.

The defendant was, as he wished to be, remanded in custody.

That the PO actively discouraged hostel wardens from accepting the defendant in this case as a resident by including negative details, including the suggestion of 'medical problems', of the case, whilst, in other instances, the same PO adopted a strategy of positively encouraging acceptance of the client as a probation hostel resident through the exclusion of particular details, suggests that this technique was employed as a form of resistance on the part of the PO to a conflict in court relations between the defence and probation. The PO subsequently re-presented this to the court in terms of an assertion of her role and a prioritisation of clients. Whilst the court were misled to some degree, it was in an indirect way. Similarly, the defendant inadvertently 'benefited' from this conflict in court relations but was, again, incidental rather than central to the process. But, if challenging court relations sometimes benefited clients, a failure to do so was often detrimental to the client.

Transmitting an Image

PAC 1 forms contained basic facts about the offence and the offender, such as personal circumstances and availability for interview. Preliminary sentencing indications from the bench were also incorporated into this document, which was then forwarded to the PO assigned to the case who, in accordance with national standards for the supervision of offenders in the community, employed the information it contained as the starting point of the report.

Although

'The sentencer in a criminal case has sole responsibility, after a finding of guilt, for imposing sentence ... in reaching that view, the sentencer will take into account information contained in a PSR' (National Standards for the Supervision of Offenders in the Community, 1992, p. 13).

The role of the report writer is to

'...present a balanced picture. This does not preclude the report writer from presenting facts or advice relevant to a particular sentence, *provided* the distinct role of the sentencer is respected' (Ibid. p.13, original emphasis).

Because the PAC 1 formed the starting point of report-writing, and court relations, in turn, formed the starting point of the PAC 1, any breakdown in communication, for whatever reason, filtered through to the report-writing stage. In one instance, a PO approached me to confirm a report interview I was to attend:

Field note extract

PO: Do you know anything about this one - I can't understand why the PAC 1 says 'considering custody' when the amount (stolen) was recovered and (client) has no previous.

AP: There was some confusion about this in court - probation weren't called in when the report was requested, so I'm not clear on the details, but (the court duty PO) knows all about it.

PO: Well he should put 'see me' on the PAC 1, because it's as clear as mud to me!

The primary concern pertaining to informal and formal court relations related to PO credibility. 'Bad' reports were referred back to probation from the magistrates and might even have been discussed at the Probation Liaison Committee (PLC).

The PLC is an official forum where magistrates and probation personnel can, theoretically, air their grievances. In practice, any criticism tended to come from the bench to the service, rather than vice-versa, and whilst this was resented by POs, who felt that too much criticism and not enough acknowledgement was forthcoming, it was also feared by report writers:

Field note extract

PO: We can't afford to get PSRs wrong - we're supposed to be working to national standards - if we develop our own style and it gets picked out of the hat at the PLC, we're in trouble.

In an official sense, probation itself should be directed at preventing re-offending and, as such, the suitability of offenders for this sentence involves a categorisation of the offender as a recidivist. In practice, POs engaged in their own offender classification system in relation to sentence-recommendations. Thus, in recommending a probation order for a first-offender one PO explained it to me thus:

Field note extract

PO: I recommended probation, she has so many problems.

This gender bias might appear to contradict court-room practice, but in fact is consistent with a judicial system which operates from a particular perspective of the family and gender roles which subordinates women:

'An examination of the familial ideology that underlies summary justice reveals that women are not equal to men in court, since the court is operating from a perspective that defines women as different and subordinate. By endorsing the dominant model of the family, the court endorses the social relationships which are generated and reinforced by that model ... It endorses the gender roles which impel women and men into separate and unequal spheres ... Ultimately, the predominance of familial ideology in the discourse of summary justice reveals the magistrates' court as yet another site of sexual inequality' (Eaton, 1986, p.97/8).

Although POs were aware that reports in the cases of women offenders were often requested on the assumption that there would be some welfare problem, I never witnessed any challenge to this. On the contrary, in analysing the dilemma of balancing welfare against punishment, one PO presented it thus:

Field note extract

PO: I've had arguments with (Snr. PO) about this - I think this client should get probation, because although it's quite a high tariff offence he has no previous - but (Snr) says that probation shouldn't be used for welfare purposes and that the report should be directed at the offending behaviour, but *I* think we should do that within the context of the offender's background, and that includes welfare problems - I don't care what (Snr) says, *this* court is still concerned with welfare, so I'm jumping on the bandwagon - I shall recommend probation, especially for women.

Whatever the intentions, the benefits to clients of balancing welfare against punishment on the basis of gender is dubious. On one hand, research shows that such practices tend to push women 'up-tariff' (although men may be relegated down-tariff, as in the above example) through the employment of probation as a disposal on 'welfare' grounds for trivial or first offences which, in the case of men, more often invoke a financial penalty. On the other, stereotypical definitions of 'mad' and 'bad' behaviour result in twice as many psychiatric disposals in female cases compared to males.

'The sexual discrepancy in psychiatric disposals must be seen more as a deficiency of psychiatry in relation to male offenders than as an excess in relation to females. Specifically, it's a deficiency in the kinds of provisions that male offenders are commonly assumed to require' (Allen, 1987, p.119).

Even though POs were aware that 'welfare' reports tended to place women 'up-tariff' for petty offences, referral procedures reflected and reinforced the court setting which, historically, forms the basis of the report writing process.

One aspect of this was the selection and classification of particular offenders for particular treatment. Because referral procedures communicated court relations to the report writer, who employed them as the starting point of report compilation and, from there, transmitted them back to the court in the form of sentence-recommendation, this process of selection often resulted, in the case of female offenders, in a care as control disposal that was more punitive than the circumstances of the offence demanded and that reflected the familial ideology of the court setting. Thus, in failing to challenge such disposals or the underlying assumptions of which they were a part, POs contributed to both a system of injustice and the wider subordination of women.

In other instances, challenges to the court process of selection involved attempts to exclude offenders from supervisory disposals, but this was conducted on the basis

that the offender presented a potential threat to PO credibility in the context of court relations because whilst he conformed to a medical model, commonly employed in speeches of mitigation (McConville et.al., 1994, p.202), he did not, ironically, conform to the treatment model that probation as a disposal espoused, even though he was a recidivist. This demonstrates that probation as a 'treatment' conforms to a control model that:

'Seeks to persuade the court that the defendant, if released back into the community, will be subject to an effective control regime which will prevent any danger of re-offending' (McConville et.al. 1994, p.204).

The success and/or the credibility of the probation officer is ultimately measured in terms of her ability to enforce such control and any confusion relating to a medical and treatment model was, thus, likely to damage credibility.

Prediction Scales and Professional Judgement

In addition to the information contained in the report referral form, probation court personnel also completed a risk of custody (ROC) score. ROC scores are a statistical estimate, based on factors such as gravity of offence, criminal history and level of court, which attempt to predict the chances of a custodial sentence in relation to a particular case. Reminiscent of the strategies associated with the work of the Charity Organisation Society (COS), prediction scales supposedly represent an objective, scientific assessment. But, rather than redressing the subjective balance of referral procedures, these statistical devices, also a reflection of the, supposedly neutral, systems context of reports, are equally selective and subjective.

The theoretical rationale for such devices in relation to probation practice is contained in the Streatfield Report:

'By analysing a multiplicity of known characteristics of offenders who have undergone a particular sentence, it has been found possible to use certain of

these characteristics to construct a formula which will give for a particular offender the probability of his being re-convicted within a stated period. It may be hoped that it will eventually be possible, by bringing together the formulae for all forms of sentence, to discover to what extent the chances of an offender not being re-convicted depend on the form of sentence imposed, and then to indicate, in respect of individual offenders, whether one form of sentence which the court has in mind is likely to have a different effect from another' (Streatfield Report, 1961, para 278).

More recently, a Research and Planning Unit seminar generally agreed that:

'The immediate purpose of a prediction scale was to improve the identification by probation officers of offenders who were at risk of a custodial sentence. In particular, scales were considered to be helpful in alerting officers to those marginal cases where there might be a chance for a community based disposal and efforts could be targeted accordingly. Ultimately, perhaps, the objective of prediction scales was to help achieve a reduction in custodial sentencing. Other possible purposes of the scale had to do with resource-allocation, management and social inquiry report writing. But whatever the objectives and purposes of risk scales it could not be emphasised enough that they had to be seen as *aids* and not replacements to probation officer decision-making' (Mair, G. (Ed), 1989, p.6/7).

With regards to sentence recommendations, decision making in practice was often confined to what was available or 'appropriate', leaving limited scope for discretionary judgement. Discussing one such case, a PO commented to me:

Field note extract

PO: Well, it's a bit of an odd one - his ROC score is only five, but he *could* get six months. I can't really justify probation because there doesn't

seem to be any problems of any kind, community service is too high - although they treat it as a disposal in this court, not just as an alternative to prison - there's attendance centre, but it's rather difficult as he works on Saturdays - I suppose he could go on Sundays and Mondays (when he doesn't work) but, I think a fine - he has money, so a financial penalty I should think.

Although the PO appeared to match sentence to offender in a diagnostic process, the sentence - recommendation related more directly to what was available than to what was considered to be appropriate and this, in turn, was decided in relation not just to legislative procedures, but by recourse to local court-room practices. As we have already seen, these often reflect and reinforce stereotypical and discriminatory images that, when formally operationalised into practice, leave little room for negotiation.

In some instances, POs exercised 'professional judgement' in an overtly moralistic manner, but this still reflected and reinforced stereotypical, and discriminatory, images. In one such example, the PO stated in a report submitted to the court:

'I believe that he has learned his lesson and the court may be prepared to put the whole incident down to the thoughtlessness and immaturity of youth. I respectfully recommend a monetary penalty as one possible disposal. He also expects 'a good telling off' from the bench'.

Whilst probation officers placed little reliance upon statistical calculations, preferring to exercise their, somewhat illusionary and sometimes moralistic discretionary judgement, such devices formed a vital component of probation practice in relation to the distribution of resources, as the following examples show:

Field note extract

PO: It's just that some probation hostels won't take people unless they reach a certain threshold.

Field note extract

PO: His ROC score comes out as minus five because it's a low gravity score and he's no previous, but this carries a maximum of six months imprisonment and community service won't even consider him with a ROC-score that low, and it will be difficult to consider a probation order as well I should think.

The somewhat contradictory status of ROC scores, as an intermediary between resource distribution and professional judgement, was further compounded by a hidden, qualitative, agenda that a PO disclosed to me but not to his client:

Field note extract

PO: His ROC score is only 25% - but with *this* bench his actual risk is much higher ... (the magistrate) is very punitive - the ROC score doesn't allow for the bench, you have to know the bench to estimate the *real* risk of custody.

This hidden agenda may have been more influential than either resource distribution or discretionary judgement in relation to decision making, as the following example illustrates:

Field note extract

PO: According to the ROC score you have a 10% chance of imprisonment, but it's not always accurate. Sometimes, because of the nature of the offence, it comes out as a higher score. You're not really a 10% risk I shouldn't think, but I'd never say you definitely *won't* go into custody, because sometimes the court make an example of people.

The PSR equivalent of the ROC score is, in accordance with current sentencing strategies dictated by the Criminal Justice Act 1991, a 'seriousness' score. Again, this

is a statistical element based on gravity of offence which, in theory, can be employed in relation to mitigating or aggravating features to relocate that offence in another sentencing band. The advantages of the seriousness score against its ROC counterpart was discussed by POs at a team meeting that I attended:

Field note extract

PO: We have this seriousness score - what does it mean?

PO: Well, it's supposed to be a scientific model, like the ROC score.

PO: Scientific my foot! We *all* know that the ROC was useless, now this! It's even worse! We're given this mathematical figure for an offence, then we're told to reduce that by knocking off amounts for mitigating features, but we're not told what any mitigating feature actually *scores*! I've *always* known that robbing an old lady in a subway and leaving her injured is more serious than robbing a wallet from a mate in a pub - I just don't see why we *need* a mathematical equation.

PO: Well, *I* think the seriousness score is one place where we are still able to exercise our own discretion - if they want to think of a number for mitigating features, just do it, play them at their own game.

PO: Well what did we have *before* ROC and seriousness scores?

PO: Nothing - professional judgement!

Whilst the greater flexibility associated with seriousness scores appeared to allow scope for the exercise of undermined professional judgement, the overriding concern was still court-room practice, to the extent that some officers were willing to completely ignore statistical devices because the bench did not acknowledge them:

Field note extract

PO: At first I wondered what we were letting ourselves in for with these PSRs, but they're really just the same as SIRs except that we don't ask what colour wallpaper they've got - it's the same medicine, different bottle that's all.

AP: How are you getting on with the seriousness score?

PO: Oh I just ignore that - it seems pointless when magistrates are not working to it - it's all very well probation having these little schemes, but at the end of the day it's the courts definition that counts.

Like referral procedures, prediction scales thus reflected and reinforced the systems context of the report writing process. As such, these supposedly 'scientific' and 'objective' assessments were only as 'neutral' as court-room practice but, because sentencers did not employ statistical devices as a direct aid to their decision-making processes, ROC and/or seriousness scores held no value in relation to maintaining credibility within formal or informal relations.

Summary

The role of the court duty probation officer was to obtain and transmit information relating to report requests, make preliminary arrangements for officer/client contact and to obtain the results of report cases. This role was seemingly a purely administrative one but, in fact, involved political components which dictated working practices and influenced both report content and officer/client relations.

The court are obliged to obtain the consent of defendants before a probation report can be compiled in any particular case. Obtaining consent was an instrumental strategy that held clear benefits for the court and its agents in that it placed the social relations necessary to the process of social inquiry on an operational basis. In that the

perceived threat of a custodial sentence, conveyed by various agents in the judicial process, was the most influential factor that led offenders to agree to co-operate with report compilation we need to be sensitive to the relativity of their 'voluntary' participation in this process.

When requesting a probation report, sentencers emitted coded signals that appeared to indicate their preliminary view as to 'appropriate' sentence. This was transmitted, along with information relating to the offence and the offender, to the probation service on referral forms. In this way, referral procedures communicated court relations to probation practice. This coded discourse was employed in a variety of ways by probation officers.

Informally, the perceived threat of a custodial sentence that signals contained played a part in client control strategies. Through an obligation to acknowledge these preliminary indications as to sentence, signals were formally employed as the starting point of report compilation and were potentially influential in any final recommendation that the report contained. But these signals might have been misinterpreted by probation officers in some instances.

The potential for mis-interpretation was an inherent feature of broad and vague signals but, whilst this holds implications for the wider administration of justice, more specific signals would not automatically eliminate a bias that is inherent to the immediate importance of signals to report writers. This related to their communicative value and the relation of this to the maintenance of PO credibility in the eyes of the court.

To this end, officers were willing to compromise their own judgements in order to comply with divergencies that occurred between the wishes of requesting and sentencing benches, to the extent that some offenders were assessed without having been interviewed. Thus, an obligatory acknowledgement of indications from the

bench held implications both for the function of the report and the role of the report writer in the decision-making process of which they were part.

Because of the formal obligation to acknowledge these coded signals in report writing, a lack of such communication contained a potential threat to PO credibility. This meant that, in the absence of such signals, probation personnel were dependent upon informal court relations to obtain the information necessary to 'do their job properly'.

The role of the report writer contained contradictory obligations that were managed through various strategies of prioritisation that operated on a number of levels.

Although informal court relations were a vital component of the process, these were subsumed beneath formal relations. Both formal and informal relations colluded to marginalise defendants, who became incidental rather than central to the process.

In addition to referral procedures and the court relations that they reflected, probation officers also employed statistical devices as an aid to professional judgement and a guide to resource allocation. The significance of these to resources, however, was subsumed beneath their irrelevance to sentencers and, therefore, their lack of value to the maintenance of PO credibility. The ability of probation officers to exercise their discretionary judgement was, in any case, somewhat illusory - inhibited, on one hand, by what was available and, on the other, by what was considered appropriate in the court-room culture in which they operated. This culture has historically assigned report writers a negative and passive role that has reflected and reinforced their marginal status.

The cumulative effect of formal and informal relations to probation practice suggests that probation reports are individualised, rather than individual, constructs and calls into question both the function of the report as a sentencing aid and the role of the report writer in this process. Given these circumstances the extent to which, at the interactive and/or organisational level, POs and their clients were able to actively

contribute, through the process of social inquiry, to the final product is questionable.

This is the topic of the following chapter.

Chapter Six

The Process of Social Inquiry

'The central feature of the inquiry is to make the probation officer able to place the criminal behaviour for which the defendant is before the court into the context of the offender's personality, background, family and social environment, and from this to identify to the court possibilities for disposals which will offer the best and most cost-effective prospects of the offender avoiding further crime' (Jarvis, 1987, p.96/7).

We saw in chapter five how formal and informal court relations operated to inform probation practice, tending to both marginalise probation clients and assign POs a passive and negative role in the decision-making process. Given this set of circumstances, this chapter will examine the extent to which both parties were able to actively contribute to the process of social inquiry.

Referral and Allocation

As we have seen, initial client-contact took place in court, at the request stage. Once a report had been requested, the client was instructed by the bench to 'see the probation officer outside court' so that preliminary details could be taken and arrangements made for the report to be compiled. All information obtained at this stage was recorded and transmitted within the service via a PAC 1 form (see Appendix B).

PAC 1s contained a paucity of information relating to the offender, partly because more elaborate information relating to the offender was properly obtained at the organisational level of inquiry. The details these forms contained largely related to and reflected the systems context of referral and allocation, which were then forwarded to the probation office concerned and, in turn, to the probation officer assigned to the case, who employed them as an initial 'introduction' to the client and, eventually, as the starting point of the written report. As such, referral procedures formed a vital component of the process of social inquiry, reflecting from the outset the systems context of reports, which informed probation practice.

Organisational procedures relating to the process of social inquiry began with allocation of the case to a report writer. Allocation procedures, in that they were subject to management discretion, tended to vary in relation to the Senior probation officer attached to any particular office who, in turn, was answerable to higher management levels. This accountability to an hierarchically organised management structure meant that, in practice, allocation procedures were instrumentalist, as opposed to pertaining to any staff-related ideologies.

Within this hierarchical structure, first year officers were more closely monitored than their more experienced colleagues. Monitoring consisted of tape-recording interactions with clients, as well as supervising any court duties undertaken. In a more general sense, all officers were monitored via the 'gatekeeping' of written reports.

The process itself was difficult to research. Although an internal memorandum described it as

'a safe and open environment to enable professional development and continued improvement in the quality of report writing',

in practice it consisted, in the words of a senior probation officer, of

Field note extract

'a hit and miss affair (whereby), when a PO writes the first draft of a report they go along to any colleague's office who happens to be free and discuss it'.

This 'quality control' was, in any case, instrumental in that it should lead to agreement about and compliance with specific criteria relating to the content of reports and proposals for sentence in compliance with the statutory obligations of the Criminal Justice Act, 1991, and the accompanying national standards for the supervision of offenders in the community:

'PSRs and proposals for community sentences must be free of discrimination on the grounds of race, gender, age, disability, literacy, religion, sexual orientation or any other improper ground. Anti-discriminatory practice requires significantly more than a willingness to accept all offenders equally or to invest an equal amount of time and

effort in different cases. The origin, nature and extent of differences in circumstances and need must be properly understood and actively addressed by all concerned - for example, by staff training, monitoring and review' (National Standards for the Supervision of Offenders in the Community, HMSO, London, 1992, p.12).

As a safeguard against any potential prejudices arising from allocation procedures, it was largely ineffective. In one instance, a report had 'slipped through' the gatekeeping net, only to be returned by sentencers as a 'bad' report. The report writer was of long standing in the Service and, consequently, although

Field note extract

'the report is ageist, it's condescending, it presents a bad image of the Service - to say nothing of allocation procedures - I suppose nobody wanted to criticise (the writer)' (Senior PO).

Allocation procedures and monitoring, then, might be important to the process of social inquiry, but not in the ways we might expect. Although one office in the study routinely held 'allocation meetings' whereby officers were invited to request specific caseloads relating to any individual interests, the matching of cases to officers and expertise was secondary to the distribution of resources, as each officer was expected to fulfil a monthly quota of reports, regardless of any individual preferences.

It was common practice in another office for the Senior probation officer to exercise what he termed a 'direct management technique', which consisted of indiscriminately allocating report cases to the next officer on the list according to quotas. When any office was 'over-loaded' with reports cases, report writers from other offices were employed to bridge the gap - in some instances 'floating' officers had this sole duty.

Thus, allocation procedures were governed primarily by the laws of supply and demand, rather than anti-discriminatory practice. Where the offender was already known to the probation service, he or she was likely to be referred to the officer responsible for writing any

previous reports. This continuity of contact may or may not have been desirable or beneficial to officer or client but, again, was a strategy that had an instrumental dimension in that 'known' offenders saved the report writer a considerable amount of time in the interview process, given that previous reports were employed where personal details, for instance, had already been verified. But this continuity of contact also held the disadvantage, so far as offenders were concerned, of perpetuating pre-existing value judgements, characterisation's and anomalies. During interviews I conducted with probation clients, one respondent commented on the content of his report:

Interview extract

'It had things in the report from years ago ... I was surprised to read it ... it obviously came from when I was in care'.

More commonly, however, the allocation of cases to writers was largely a matter of 'chance'. Once referral and allocation procedures had been implemented, clients were introduced to the organisational and environmental setting of probation practice.

The Environmental Setting

Clients were normally contacted for interview by letter, along the following lines:

Dear Mr. Smith,

As you will be aware, at your recent appearance before the court your case was remanded for a Probation Officer's Report to be prepared.

I should, therefore, be grateful if you would call and see me at my office (address above) at **10.15 a.m. on Tuesday, 24th March**, so that we can discuss this further. If you cannot keep this appointment, it is most important that you contact me as soon as possible so that we can make other arrangements to meet.

In cases that I had arranged to attend, letters to clients sometimes - but not always - added:

'As discussed with the Probation Service representative at the court, it is proposed that a researcher, Anita Pavlovic, will be involved in the interview'.

Directions for locating the probation office were usually attached to the letter. Alternative arrangements - such as home visits - were made in a similar way or, sometimes, by telephone when the client called to say that the preliminary arrangements were inconvenient. Where clients were remanded in custody for the report to be prepared, arrangements were made through the 'special visits' channel of the prison service. But, in the vast majority of cases, interviews took place at the probation office.

One of the probation offices in the study was situated alongside the police station and the court itself, another one adjacent to a shopping precinct on a housing estate, and a third was located next to a social services and housing office on a main road into the city centre.

Within, offices varied in design. Beyond the reception area, all consisted of a common room area where officers could lunch together. In two of the buildings, individual offices were located on different floors, the third being all on ground level. The latter had a more social atmosphere about it, probably because colleagues were less isolated in the sense that they were more likely to meet by chance in the hallway, and there were fewer security locks to negotiate in getting from A to B. In spite of various efforts to individualise the environment with the usual array of potted plants and posters, there was the general institutionalised feel associated with 'the' office as a, not entirely unpleasant but, as the following poster depicted, sometimes frustrating, place of work:

'We trained hard, but it seemed that every time we were beginning to form up into teams we would be re-organised. I was to learn later in life that we tend to meet any new situation by re-organising, and a wonderful method it can be for creating the illusion of progress while producing confusion, inefficiency and demoralisation'.

Caius Petronius (Roman Consul, AD 66)

Client interviews took place at the office most convenient to the client's address. In comparison to the office as a work environment, the office as a communicative setting can leave much to be desired.

Studies of the consumers' view of social work suggest that the geographical location in which consultation takes place may influence consumers perceptions of the process. Rees (1973) discovered, for example, that clients were reluctant to approach social workers housed in an office block with other local authority departments because they assumed that they were housing officials, there to deal with housing problems.

We might assume from this, particularly in the instance of the court located office, that clients perceive the probation service as a controlling, as opposed to caring, agency. This was further compounded by the mandatory features of the PO/client relationship, which had been ordered rather than sought.

On arriving at the office, clients were required to make their presence known to a receptionist who, for security reasons, was situated behind a perspex panel, and then politely asked to wait in the reception area until the probation officer was available. The waiting area itself was a rather public place. I experienced the feeling of being under the public gaze whenever I waited there to meet arrangements made with officers. Generally, there was the feeling that anyone who walked into the reception area would 'know' why I was there, that I must be an offender. Although attending a local office was a procedure designed for clients' convenience, this stigmatising sensation may well be more enhanced if there is a possibility that friends, family or neighbours may see you entering the office.

Because of the system of security locks, probation officers usually went to the reception area to introduce themselves to clients and, from there, escorted them to the office for interview. The necessity to re-negotiate the security locks en route created an atmosphere not unlike that associated with penal institutions.

Offices themselves were usually standardly equipped - with desk, filing cabinet etc. - as well as, in some cases, toys for any accompanying children. Seating arrangements attempted to be casual in that clients sat alongside, rather than opposite, the report writer's desk, with additional seating provided should spouses (or researchers) want to attend, although this and the presence of, rarely used, easy-chairs, failed to detract from the formality of the situation - even though formality itself was sometimes undermined by geography.

In the office situated on the main road, for instance, it was often very difficult to hear or be heard above the constant roar of traffic and, for the same reason, opening windows on a hot day was more or less out of the question. Officers, accustomed to this environment, may have found it less distracting than clients (or researchers!). It was within this environment, then, that the majority of report-interviews were conducted.

The Interview Dynamic

Although referral and allocation procedures were important to the process of social inquiry, officer-client interaction properly began at the interview stage.

'In an interview, each person must be aware that the other has goals and there is a common understanding of the rules of the game' (Berne, cited in Day, 1981, p.169).

According to 'game theory', conflict arises when messages are not perceived accurately because each actor is playing by different rules. This would suggest that, because the most powerful participant (or informant) has the best chance of 'imposing his definition', the interview dynamic involves power differentials. But it would be over-simplistic to assume that the PO had complete power over the interview situation.

According to symbolic interactionist theory, the interview as a social act is a

'special case whereby the individual reviews past and/or present situations and actions with the aims of self-assessment and self definition' (Kuhn, cited in Day, 1981, p.167).

Although assertive clients tended to contradict the basis of the interview situation, this definition is particularly conducive to the casework approach of social work in general and probation practice in particular, with its emphasis on the client's responsibility for both committing the offences and willingness to reform. When submitting a report to the court, relevant information may include

'the offender's explanation for the offence, acceptance of responsibility and feelings of guilt or remorse, attitudes, motivation, criminal history'.

(National Standards for the Supervision of Offenders in the Community, HMSO, London, 1992, p.15).

But a 'review of past and/or present situations and actions with the aims of self-assessment and self definition' applied to POs, through their relationship with the court, as well as to clients.

Day (1981) suggests that, during the interactive process between PO and client, a 'perceiving-acting' loop develops whereby the behaviour of both is influenced by the behaviour of each through a process of perception, interpretation and action. Consequently, the PO's behaviour is governed by perceptions of the client and client response. This, however, begs the question of what governs perceptions and responses. To assume that POs and clients merely act and react in relation to each other is to ignore the systems context of social relations in report compilation.

Process and Power

The administration of justice is not a game (Carlen, 1976). The rules governing it are not freely agreed upon by all the participants. As part of the administration of justice, the process of social inquiry involved power differentials which need to be understood in terms of a triangular relationship between the PO, client and court.

In comparison to the wealth of 'information' offenders were given in relation to the function of the report and why they should consent to it, there was a paucity of information relating to

the process of social inquiry. Offenders who had never previously been engaged in this process were unsure of what to expect or what was expected of them. The only knowledge of the process that some offenders had was gained from other offenders, rather than any agency source. Although most offenders said that they had found the interviewing PO as relatively 'easy to talk to' in relation to the offence, many found the process difficult. This was partly because of the interview situation itself and partly because of the perceived irrelevance and intrusiveness surrounding the topics of discussion.

For many, the PO's were strangers and, although they saw them more as befrienders than figures of authority, offenders said that whilst they had few reservations about discussing the offence, they found it difficult to discuss personal circumstances:

Interview extracts

'(The PO) asked me loads of questions about my family and that and I just couldn't answer some of them. It should have been more about myself than my family'.

'I was asked about my family. I said that there had been a few ups and downs. I didn't like to say too much. I thought about how my family would feel if I discussed *their* lives'.

At the level of the interview dynamic, power differentials were evident by virtue of the fact that the PO, as the interviewer, generally chose the topic of discussion. Although clients were invited to elaborate on any topic of discussion, client input was, nevertheless, restricted by the questions that were put. As one probation client that I interviewed stated,

Interview extract

'I was just *asked* them types of questions by the PO ... it was a kind of questionnaire really'.

What probation clients did not realise was that the nature of the questions put were dictated in large part by a template to which PO's were expected to adhere. As we have seen, referral

forms properly formed the starting point of social inquiry and the information they contained was imposed from the bench at the request stage. Similarly, although in an official sense

'the information needed ... will differ greatly from case to case' (National Standards for the Supervision of Offenders in the Community, 1992, p.12).

report compilation followed a standard format comprising:

'introduction - identifying the document (as a PSR in accordance with S.3(5) of the 1991 Act and with national standards for the supervision of offenders in the community) and giving the court, the date of the hearing, the date of the report, the full name, addresss, date of birth of the defendant or offender and the offences charged or convicted; then a summary of the sources drawn on to prepare the report.

current offence(s) - summarising the facts and seriousness of the offence(s), including aggravating and mitigating factors known to the report writer and the offenders attitude to the offence(s);

relevant information about the offender - such as previous offending and response to supervision, motivation, strengths, personal problems, and (in the case of violent or sexual offence) evidence of risk of serious harm to the public;

conclusion - and, whenever relevant, a proposal for the most suitable community sentence, under which, were the court to choose that course, the report writer considers the offender could most appropriately be supervised and the risk of future offending be reduced. The report should finally be signed by the report writer' (Ibid. p.19).

Whilst, in the court context, this standardisation tends to routinise cases, in the organisational setting it meant that interviews were conducted according to the requirements of the criminal justice system, rather than those of PO or client, which dictated both the format and content of reports. Pre-sentence reports, in particular, were obliged to follow a specifically defined

lay-out but, even when dealing with their social inquiry counterparts, officers generally held the court as their point of reference when writing reports. This was made clear when POs explained procedure to me:

Field note extract

PO: 'Now, you can see how I set out a report - I divide it into sub-headings, because I think that's easier for the court to refer to, but there's no right or wrong way'.

For their part, some offenders stated that they would have found it easier to discuss things if topics had been generalised, rather than formatted:

Interview extract:

'It would have been easier if they'd said "tell me about yourself" and left the details to me, instead of them asking all the questions. There were some things I wanted to say but was never asked, and some things I didn't want to talk about but had to answer' (Offender).

As such, the process of social inquiry inhibited the development of a positive working relationship between report writers and their clients because the PO role contained an obligation, relating to the function of the report, to conduct enquiries in ways that were meaningful to the criminal justice system. This is not to suggest that the PO was powerless. For the most part, client participation was nominal and tended to be either allocated by the PO (and not necessarily part of client relations) or, alternatively, form part of a strategy of resistance and, therefore, should be properly located as an aspect of client control. In the following example, the client had been convicted of assault and his case adjourned for a report to be prepared. The court duty PO (who in this instance was also the interviewing officer) spoke to the client and his father outside court:

Field note extract

Father: Look, I've had plenty of dust-ups when I was a lad, and that's all this was - I can't believe it's gone this far - the police were just going to caution him, but the (victim's) family wanted to prosecute.

PO: Well, the magistrate was concerned about the injuries inflicted.

Client: I just caught him wrong, that's all - it was just a thump, a punch, that's all.

PO: Well, it's vital that you keep your appointment (with the PO) - we haven't much time on this one.

Father: Oh, he'll keep it - he's never been in any sort of trouble before.

PO: It seems the magistrate is thinking of community service.

Father: It's hardly fair - what about his job?

PO: It won't interfere with his work.

Father: He only gets one day off.

PO (to client): Well, you'd have to do it then - you won't need your Dad at the interview will you, you can handle that on your own can't you - someone will contact you about the appointment.

In this instance, the PO awarded the client status above his father, but this related as much to the PO's assertion of his own role as to client relations.

Client Control and Resistance

The process of social inquiry incorporated various activities directed towards the regulation of client behaviour. Reflecting the status of positions within the relationship, and invoking the wider authority of the systems context of inquiry, POs exercised various techniques of

client control. This usually began with initial contact in court, where court personnel impressed upon clients the importance of attending interviews and often combined this with a warning that, without the report, the client might receive a custodial sentence:

Field note extract

'It's very important that you keep your appointment with the PO because the court need the report to decide sentence and, without it, you may well get a custodial sentence' (Duty PO).

Similarly, fieldwork officers sometimes employed the court setting as a means of client control. In the following example, the client had twice failed to keep his appointment with the officer assigned to write his report and had now arrived late for a third appointment. The PO escorted the client to the court building and introduced him to me. This might appear to be a matter of courtesy, as I was to attend the report interview, but this particular officer was not in the habit of introducing me to clients or obtaining client consent for my presence at interviews and, after this client had left, the PO disclosed the motive behind his method:

Field note extract

PO: I told him I won't be seeing him today if he can't get here on time.

AP: Do you have other appointments to see?

PO: No, but I'll see him on *my* terms, not his - I said, 'I'll just take you over to the court to see a colleague of mine' - I thought I'd put the frighteners on him, you know, bringing him over to the court. I bet he'll be on time for his next appointment!

Failure to keep appointments sometimes resulted in a refinement of the same technique, whereby POs invoked the authority of the court as a means of control, either verbally or in a written warning. In the following case the PO told her client, who had telephoned to say he was unable to keep his appointment as it coincided with a job interview:

Field note extract

PO: Well, I'll make you another appointment, it's up to you whether you keep it, but it says (on the referral form) that the court *are* considering custody.

In another instance, the PO wrote to his client, stating that:

Field note extract

PO: If you do not respond to this letter I shall have no alternative but to inform the court that you have failed to co-operate.

Alternatively, failure to keep appointments resulted in the PO asserting her own authority, either in direct relation to the client or through the sanctions of the court. In the following case, retaliation as a form of active resistance reflects power differentials between PO/client. The case had been adjourned for a report to be prepared but, during the course of the proceedings, it became clear that the client also had outstanding fines. He offered to clear the arrears at a rate of £30 per week between his present and next court appearance and, in the meantime, was remanded to a bail hostel. Probation personnel confronted the client outside court:

Field note extract

PO: Why did you offer £30 per week - you know you can't pay that!

Client: 'Course I can.

PO: You're living in cloud cuckoo land you are!

Client: I've been promised a job.

PO: Doing what?

Client: Plastering - £120 to £250 per week.

PO: Are you a qualified plasterer then?

Client: No, but

PO: Well, don't talk rubbish - you won't earn that! You're talking a load of rubbish!

Client: No I'm not - why am I?

The court PO reported to the interviewing officer that the client was retaliative when she confronted the client. In response, the interviewing PO devised a technique of control:

Field note extract

PO: We'll see about that - we'll wind him up a bit at the interview.

More commonly, POs used recourse to the power of their role as an officer of the court:

Field note extract

PO: He's not turned up for his appointment again. I've left a message at reception to say that if he turns up now to tell him to come back tomorrow - he's not messing *me* around - he's a brat, a spoiled brat - he's already admitted to me that he doesn't want to work.

PO: You ought to recommend community service in that case.

PO: No - he's not the kind to cope with prison so I'm going to recommend a suspended sentence - let him have *that* hanging over his head.

But whilst techniques such as this appear to express PO power, it is only relative power in relation to the client. Such assertions are only as effective as the ability to carry them out and, as we have seen, the court tends to inform probation practice as opposed to probation practice being able to influence sentencing decisions.

It was also common to remind the client at interview that the court might be considering custody. In the following case, the client had been convicted under s.4 of the Public Order Act of threatening behaviour in an incident which involved the firing of an imitation firearm:

Field note extract

PO: How long had you had the firearm?

Client: I'd just got it the previous evening.

PO: That can be proved can it?

Client: Yes, I think the police have the receipt.

PO: So you hadn't been going around toting the gun?

Client: Oh no, absolutely not, no - it's the first time I'd taken it out.

PO: Because the magistrates have said 'all options' and the court may consider custody - you know what that means?

Client: Er, I'm not sure.

PO: Locking you up.

This technique at interview may have served a dual function of client control on one hand and deferred responsibility on the other:

Field note extract

PO: The thing is, what to do with you - of course, it's the courts decision.

In response to both direct control and the broader situation in which they found themselves, probation clients exercised various techniques of resistance.

Whilst failure to keep appointments was one, passive, form of client resistance to control, failure to co-operate was not necessarily a form of active resistance. In one case, for example, a client convicted of sexual offences refused to speak to female probation personnel, but this might have been completely unrelated to resistance or control.

Failure to comply as a form of direct resistance is more clearly illustrated in the following case, where the client adopted an interventionist approach to the interview and simultaneously abstained from elaboration. The result was that the onus of responsibility was laid firmly with the PO.

Field note extract

PO: Who is your solicitor?

Client: I can't remember his name now.

PO: Do you have his phone number?

Client - I do, but not on me.

PO - Its just that it's sometimes useful to ring

them ... let's start with a picture of your

home, is there a simple way of describing

how you feel about your home?

Client: I've no complaints.

PO: What about relationships at home?

Client: They're OK.

PO: Lets go back to when you were younger - was there anything you feel was particularly important - what made you feel happy or sad?

Client: What do you want to know? I went abroad for a year.

PO: On holiday?

Client: Yes - we all have our ups and downs when we're kids, but it's just part of growing up.

PO: Yes, is your health OK?

Client: Yes, fine.

PO: Right, employment - (The PO questioned client about his employment pattern since leaving school. Client has had a number of temporary and permanent positions, which he recalled to date, but was presently unemployed).

PO: Why did that job end?

Client: Why - because I couldn't take it anymore!

PO: What's your income at the moment - are you signing on?

Client: No.

PO: How do you support yourself?

Client: With the help of my family.

PO: Right, how's your health?

Client: You already asked me that - I've been ill, but not serious enough to go to a doctor.

PO: Can you put a name to that illness?

Client: Yes - common cold, back ache.

PO: Oh, I see. I think that will do for now.

(In fact, the interview continued for another six pages)

PO: I suppose we need to talk about what the court might do - they've already said that they're considering sending you to prison, you were disqualified from driving not that long ago - the court will say you've taken no notice of them.

Client: I know. I can't do anything about that if that's what they think.

PO: I mean, the court may consider supervision, a probation order, I can't see any reason for that, but

Client (interrupts): Look, I *know* where I am, I just want this sorted.

PO: Has your solicitor said anything about what he thinks the outcome might be?

Client: Yes, he has. As far as I'm concerned I just want another fine - probation would tie me down.

PO: Well that might be part of it so far as the court are concerned.

Client: If it happens, I'll have to face up to it.

Assertive clients presented problems for the PO - who in this particular case commented to me:

PO: I don't quite know what to do about this one - he's very strong minded - I'll have to think about this one.

This information, and the interpretation of it, is subjective. Attempts by clients to contextualise their situation, or to institute their claims for particular treatment at court, and thus a particular recommendation by the PO in the report, were usually interpreted as unhelpful or obtrusive. In the following case, for example, the client explained his offending behaviour in terms of a perceived social and judicial injustice. Convicted of driving whilst disqualified, he arrived at the interview armed with a folder full of documents relating to his

personal debts, his efforts to clear them being presented to the PO at interview as the basis of his offending behaviour.

Field note extract

Client: The thing is, see, I had a letter come - I mean, you keep getting these bills coming in the house, and you're getting your house re-possessed - I mean, I've never had debts in my life, and when they took me licence off me - now I've got about £1500 worth of debt and I can't get work. I just don't know what to do. I'll show you the bills I've had ... so I went out, to try and get work, and the police stopped me, outside my house ... they've took everything away from me, I've worked *all* my life.

PO: Why were you disqualified in the first place?

Client: For bald tyres and stuff like that - I've *never* had drink involved - *never* - I've never been a thug, never beat people up or *anything* like that ... if they were to give me my licence back ... they've *got* to understand, surely, it's my *livelihood*, I've *lost my house as it is*, what *else* do they want to take off me? It's only because I'm *working*, it's only because I need to go out and *work*, that's all it is - I mean, you get these bills come in and you're just *sitting* there - what you supposed to *do* - how am I supposed to get my tools to the job - I don't know how you're supposed to *do* it, I just don't *know* - if I had a job like *yours*, in an office, I could *do* it, but not in the building trade, I just can't *do* it.

PO: Maybe you're going to have to change from the building trade.

Client: Look at all these (debts) - I had sixteen blokes working for me when I had my driving licence, now I've got none!

PO: Yes, but that is *past* I'm afraid

Client: *Past!* *There's* a letter for my house being re-possessed - what am I supposed to do - just sit in the house and wait for them to take the keys?

The client's actions - both in terms of committing the offence and attempting to actively participate in and contribute to his case - were perceived by the PO as non-compliance in both the immediate and the broader context:

PO: I think you've got to face *your* responsibility in this - I don't think it's good enough for you to blame everyone else - *you're* responsible because you keep flouting the law - it doesn't matter *what* mitigation you can put forward, the fact is you shouldn't drive!

Similarly, clients who failed to accept the court's guilty verdict presented problems for the report writer. A PO commented on one such case:

Field note extract

PO: He's guilty after a trial - it's always difficult - he refuses to accept the court's decision and, therefore, I can offer no analysis of his offending behaviour.

AP: Do *you* think he committed the offence?

PO: I don't know really - he says he didn't, and it's not his usual thing - but I'm not here to challenge the court, that's a job for his solicitor.

The above exchange illustrates that a failure on the part of the offender to accept the courts decision affects PO/client relations in terms of three, interrelated, aspects - client credibility ('he says he didn't do it'); the perception and categorisation of clients ('it's not his usual thing'); and role ('I'm not here to challenge the court').

Contextualising and Categorising Clients

As we have seen, the objective of social inquiry is contextualisation. The POs role in this process was to gather 'relevant information' and, from this, to make an individual assessment, based on 'professional judgement', of both the offence and the offender. But

'The assessment process in social work is not about a collection of facts; it is rather one person's power to convey his or her perception of the other's experience. The perception of that powerful person (social worker) is influenced both by the expectations of those empowered to reach decisions on the basis of their information (magistrates) and by their own previous experience and expectations of the other (defendant). Crucially, likewise, the other (defendant) will present information and attitudes only as a response to their understanding of those perceptions' (Whitehouse, P., 1986, p.117).

In relation to the offender, 'relevant information' officially includes

'relationships (Eg, family, friends and associates), strengths and skills and personal problems, such as drug or alcohol misuse, or financial , housing, employment, medical or psychiatric problems (National Standards for the Supervision of Offenders in the Community, HMSO, London, 1992, p.15).

'Relevant information', then, includes reference to personal traits, inter-personal relationships and situational or environmental factors - in short, it involves the categorisation of clients.

Categorisation may be conducted on a, seemingly, purely factual basis - i.e. the client is unemployed, or homeless - but classifying an individual as 'homeless' or 'unemployed' without reference to the social conditions of that situation amounts to political non-action that is political in its effect. Thus, the historical process of relegating the political to the personal persists in contemporary probation practice and forms part of a professional culture that has consisted of the assessment of one class or culture by another. Complimentary to this, and other, social work cultures is the selective elevation of knowledge to expertise.

Report writers often engaged in the practice of classifying offenders in relation to a specialist diagnosis, as in cases of medical or psychiatric problems:

Field note extract

PO: 'He's a dangerous chap, this one - he's schizo'.

'Dangerous' clients were confronted in practice by attaching an 'officer caution' to the request referral form to warn the report writer not to interview the client alone. But officers assessed and confronted 'dangerousness' in a variety of ways. Home visits and safety came under discussion between several officers at a team meeting. The issues involved are complex and illustrate the relationship between client credibility, categorisation and role:

Field note extract

PO 1: All you can do is inform colleagues where you're going.

PO 2: I don't have any real concerns, but it's my policy to detect warning signs from the criminal record and from my judgement of the client at interview.

PO 3: *I* think there's too much onus placed on the victim - it's almost a professional failure if a PO is attacked.

PO 4: You often don't know people until they *do* threaten you, or worse.

PO 5: We need more training to deal with anger and violence.

PO 3: I think we should consult with colleagues, but I wouldn't like to see rigid guide-lines for home visits.

In this way, the categorisation of clients informed probation practice in the process of social inquiry. But, whilst POs were reluctant to trade autonomy for safety in relation to 'dangerous' clients, there was also an awareness of contextual factors relating to offenders' environment, discussed at the same team meeting:

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Field note extract

PO 1: I think you should be cautious and be aware of the surroundings - blocks of flats for one - I knew of a colleague who was dangled from a balcony once.

PO 2: We *do* need some system - ringing in seems plausible, but we can't keep going to a phonebox.

PO 3: No, most don't work in the areas we go to and it would cause more problems than it solved if we weren't able to ring in.

Environmental context was, in turn, was linked to gender and safety:

PO 1: I don't think women officers should visit a man alone.

PO 2: I take the point, but male officers could easily be accused of rape by lone female clients.

In assessing and confronting issues relating to categorisation, contextualisation and practice, POs ultimately reverted to experience:

PO: There'll *always* be unavoidable incidents, it's part and parcel of the job, but it's down to experience.

'Experience' was gained through long-term contact with clients as categorised groups, as opposed to individuals:

PO: He's a quiet, non-aggressive lad - bullied at school - with that type, a gun can give a sense of power, I've seen it all before.

Through this process of classification, POs came to understand their clients in terms of 'common sense'.

'Common sense is an elusive and multi-faceted construct ... Common sense is sense which is not only common because it is crude but because it is purported to be held

universally to be true and to be universally applicable. It is common *sense* not only because it is the opposite of nonsense or falsehood, but because it is 'sensed' ... It is intuitive, instinctive ... It has to be experienced. But this logically detracts from its universality, for my experience is unique, as is yours' (Worrall, A., 1990, p.18/9).

From the perspective of the POs common sense, some clients were categorised on a purely impressionistic, or intuitive, basis, which often incorporated non-specialist diagnoses as in the following examples:

Field note extracts

'Mr. X impresses as being a friendly and outgoing man of normal intelligence' (SIR).

PO: 'He's a bit of an oddball this one'.

PO: 'He's a rather pathetic little man .. he's very depressed'.

In some instances this common sense approach was overtly cliché, reflecting and reinforcing stereotypical images associated with criminality:

Field note extracts

PO: There's something not right here - still waters run deep, he was too quiet, there's more to him than meets the eye.

PO: I don't like to sound racist, but I associate that type of hat he was wearing with West Indian youths - I wonder if he has a drugs problem.

But clients were also defined in relation to interpersonal relationships, usually within their family context. This practice is, of course, historically embodied in probation practice and it was routine, during interview, to question clients in relation to their family background - that is, their marital status, family size, position in relation to siblings and the occupation(s) of parents or spouse. This 'contextualisation' was perceived by offenders as intrusive and

irrelevant, as the following extracts from interviews I conducted with probation clients indicate.

Interview extracts

'She asked me *loads* of questions, right back to when I was a child - personal things, family matters - nothing to *do* with the offence'.

'They talked about my family - not *my* children, but my Mum and my sisters and that. It worried me a bit because none of them knew about me being in court, they *still* don't know, I kept it from them because I knew it would worry them. Even the guy I was living with didn't know until the day I was being sentenced, and I only told him then because I wondered what would happen to my children if I went to prison'.

'I come from a big family - I've got 17 brothers and sisters. He asked me if my parents were still alive and when I said they were he asked why I didn't live at home. I felt like saying, "because I'm bloody 38 years old", but I just told him that there was no room at home'.

'They wanted to know if any of my family had ever been in trouble and whether they were working or not. I just didn't see what that had to do with it'.

'They just wanted to know *everything* about me, that was their attitude'.

It is easy to see why offenders considered this line of questioning intrusive and irrelevant. The practice of relegating the political to the personal through the casework approach adopted from the COS evoked the same resentment among today's recipients as it did among their nineteenth century counterparts. In relation to offenders perhaps more so, because

'Once a person enters the realms of criminal justice as the accused, his offences (not his social being) become the focus of attention' (King, M. and Piper, C., 1990, p.95).

Whilst social information was considered relevant by probation officers in that it fulfilled the functional requirement of reports to contextualise the offender, it did so in ways meaningful to the criminal justice system rather than to the offender. Thus, what was perceived as social and, therefore, irrelevant, information by the offender in relation to the offence was reconstructed by the probation officer in relation to categories and classifications that decontextualised it from the social context and reconstructed it in the legal domain.

Assessments here often related to 'good' or 'criminal' families and, in turn, to client credibility. Comments such as:

Field note extract

PO: 'They seem like a good family'

were transmitted to the court via the report thus:

SIR extract

'(Client) lives with his parents in their privately owned, four-bedroomed, detached property situated in a pleasant residential area. Home relationships were described to me as very good. (Client's father) was able to confirm this when I met him ... he told me that his son had never been a cause of worry to him and both he and his wife were shocked when the circumstances surrounding the offence were made known to them' (SIR).

Consequently, the client was not perceived as a 'real criminal':

Field note extract

PO: 'It's not as if we're dealing with a professional criminal - it's just one of those things - it's just unfortunate that it involves a weapon'.

Whilst 'real criminals' were defined as coming from 'criminal families' - that is, families which contained individual members who had been convicted of crimes, clients who were not defined in this way also acquired their status-category in relation to family context.

Field note extract

PO: He was quite sweet ... he comes from a good family.

'Good' families were not simply those which did not contain criminal members. Although this was one influential factor, 'good' families and 'not real criminal' clients were associated with a particular socio-economic status:

Field note extract

PO: 'His parents are living abroad, but still own a very deluxe property in this area'.

Again, this image was transmitted to the court:

'(Client) lives at the above address, which is a four-bedroomed house situated in a pleasant area ... His parents are aware of his offending and are deeply upset ... I believe that he has not previously appeared before the courts on a criminal matter ... he also stated that no-one in his family had ever been in trouble ... I doubt whether he would re-offend' (SIR).

The classification and contextualisation of clients in relation to their family sometimes over-rode even specialist diagnosis, as in the following case.

Field note extract

PO: 'They decided he wasn't fit to plead last time, but he knows *exactly* what he's doing - he comes from a *family* of criminals'.

The client referred to above was convicted of theft from various shops, which he said he had committed under the instruction of others. He was a diagnosed schizophrenic who claimed

that, as far as he was aware, the offences were committed with the knowledge and authorisation of the shop staff. In another, similar, case the client had been convicted of receiving stolen goods and obtaining goods by deception through the fraudulent use of stolen cheque books. This client also maintained that the offences were committed under the instruction of others and was also consulting a psychiatrist in relation to depression and a 'drink problem'. Whilst the first client was discredited, however, the second client was presented thus:

SIR extract

'Ms. A presented as a pleasant young women who appears to have had a number of tragedies in her life over the last couple of years ... she was involved in modelling for a number of charity functions ... she then obtained employment with an advertising agency (where) she worked her way up (to executive level) ... she left after her fiancée was tragically killed in an accident near her place of work ... her whole life was shattered ... she told me she then became involved with people she would not normally have associated with ... then another friend she is close to was murdered in her presence ... she is also the witness in a rape trial ... she feels very ashamed at appearing in court ... she became involved in her current offending towards the end of last year ... she was short of money, unemployed and Christmas was coming ... some girls she met told her about using stolen cheque books and asked if she was interested ... eventually she said she was and was later contacted by a man ... the arrangement was that the books and cards were left in her shed at the bottom of the garden and she was told what shops to go to and what goods to take ... drinking alcohol gave her the confidence to commit the offences ... she wants to avoid any further court appearances ... the court may feel on this occasion they could deal with her offending behaviour by way of a probation order to offer her support and advice ... '.

This supports Allen's (1987) observations that

'documents tend to undermine women doing anything at all ... as being moved by other's agency rather than their own ... the report erases her agency, the crime merely "develops", the tragic events "follow".." (Allen, H., 1987, p.47).

In contrast, (psychiatric) reports present males,

'as an acting subject ... desperately damaged and dangerous, but still an acting subject' (Ibid.)

Thus, whilst 'common-sense' notions of 'the' family might over-ride specialist diagnoses in the criminal classification of probation clients, gender intervenes to complicate and contradict the issue. Women within the family were recognised as having a subordinate and isolated role.

Field note extract

PO: 'I had this woman once and she had domestic problems - they seemed trivial to everyone else - rows with her husband about running out of tomato sauce or something - but it was her *life* - it helped for her to talk about it and she had no friends - *I* was that woman's only friend - I taught her to be more assertive - it wasn't outright feminism, I just advised, assisted and befriended her'.

But, in reconciling the somewhat conflictual status of woman and offender - a contradiction in itself arising from a 'gender contract' (Carlen, P. et. al. 1985) - probation personnel sometimes hierarchically constructed this dual status in relation to a broader vision of justice. In one case, a female client appeared for sentence following the preparation and submission of a report. She was very worried as to the outcome of the case and, in addition, was concerned as to whether she would arrive home in time to collect her children from school. But the court was running behind schedule, so that some cases had to be postponed until the afternoon sitting. The PO commented to me:

Field note extract

PO: It looks as if she'll be put back until this afternoon.

AP: I hope not, she's very worried about it.

PO: She wouldn't have to face it if she hadn't committed a crime.

In the event, the defence solicitor persuaded the court to hear the case before they retired for lunch, on the grounds that the client had child-care arrangements to consider. As the court was already running late, the case was disposed of rather hastily - the bench reading the report whilst the defence addressed them. After disposal, the PO commented to me:

Field note extract

PO: Well! They just rubber-stamped that - she'll think it's easy to do that again and get away with it, dealing with it like that.

The same PO remarked to a colleague:

Field note extract

PO: They just rubber-stamped that case - they didn't even read the report - she'll think she got off lightly ... she said she had to get back for the children - she should have thought of that before.

For this PO, the practicalities and difficulties associated with gender in this case were secondary to the client's criminal status. This might have been due to the court's apparent failure to acknowledge the report or, put another way, the court's hierarchical construction of the client's needs over probation practice. In comparison, the report writer in this case was satisfied with the end result, rather than the means of achieving it:

Field note extract

PO: I don't care whether they read the report or not, so long as she got probation - great!

Other clients were categorised in direct relation to the *class* of offence they had committed, as in the following case.

Field note extract

PO: *His* trouble is he doesn't see himself as a real criminal because he sees his offence as a motoring matter ... driving whilst disqualifieds are always the same.

Offences, in turn, were sometimes located within a broader perspective of crime and justice which, in turn, acknowledged another client category. Discussing a case of housing benefit fraud, a PO commented to me:

Field note extract

PO: I know it's the same as cheque-book fraud, but it never seems as bad really and, anyway, tax fraud is the same crime, but white-collar crime is never treated as seriously by the courts - DSS claimants are made an example of, people tend to forget that they're often the *victims* of crime as well.

The categorisation and contextualisation of clients was an inherent factor of probation practice in the process of social inquiry. In contextualising offenders POs referred to a hierarchicisation of typologies, sometimes located within a broader cultural and/or judicial perspective, which were informed by and reflected 'common-sense'. This, in turn, reflected and reinforced magisterial common sense.

'Magistrates appeal to common sense in order to account for their actions. In so doing they make assumptions about "what everyone knows" to be self-evidently true (i.e.

Carlen, 1976). They free themselves from any obligation to justify their actions on any other, more 'professional' grounds. By using the term 'common sense', magistrates make their activities "visibly rational and reportable for all practical purposes" (Garfinkel, 1968). They are, as ethnomethodological studies have demonstrated, employing procedural device which allows them make sense of data which have no inherent meaning or coherence. They are establishing rules for handling such material and for minimizing any challenge to their handling of it' (Worrall, A., 1991, p.18).

In contextualising offences and offenders in terms of common-sense classifications, the process of social inquiry both perpetuated and reinforced immediate and broader discriminatory practices. In the immediate sense, the categorisation of clients influenced POs perceptions of client credibility.

Client Credibility and the Verification Process

Credibility, as opposed to truth, is central to judicial process. As part of that process, client credibility represented a vital component of both the process of social inquiry and PO/client relations. This section will demonstrate the importance of typologies to client credibility and illustrate the relationship between client credibility and PO credibility.

As we have seen, notions of criminogenic families were particularly influential in categorising clients. The relationship between this categorisation and credibility is clearly defined in the following case. The client had been convicted after trial of theft of property. The victim was an elderly woman, whose handbag was snatched as she walked along the street. In court and at the SIR interview the client denied his guilt and claimed he was the victim of mistaken identity. Reading through the report on the day of sentencing, the court PO commented to me:

Field note extract

PO: They won't like this - he's lucky its not robbery - he came behind her according to this.

AP: He still denies it was him.

PO: That's what they all say - this family are well known to the courts.

Probation personnel in the magistrates' court deal exclusively with 'guilty' defendants. For the client convicted after a trial, as in the preceding case, credibility has already been denied by judicial process. In accordance with its role in judicial process, the process of social inquiry confirmed this guilt in a common sense fashion which, as already discussed, minimised any challenge to it. But clients who had admitted guilt from the outset did not automatically receive credit for their guilty plea. These clients were not necessarily perceived as credible but, rather, as criminal and criminality, in turn, was defined as dishonesty. Thus, PO/client relations were founded on mistrust.

Field note extract

PO: You never know if they're telling the truth.

As an officer of the court, it was not the role of the PO to challenge the information accepted by the court nor, consequently, to take a client at her word should she dispute it. (This in itself may perpetuate a system of injustice, given the amount of wrongful convictions that come to light). Rather, the onus was on the client to assert their credibility against verification procedures designed to test it. Whilst such procedures had a statutory basis, POs also devised their own strategies for testing client credibility. In one such instance, the PO concluded an interview with a client convicted after trial thus:

Field note extract

PO: Are you still maintaining your innocence, because I've been hearing some stories since I wrote the report.

Client: What's that?

PO: Aha ... I can't divulge my sources.

Client: I ain't done nothing.

PO: You ain't done it?

Client: I swear to God, I haven't done it .. I'll thief, I admit I'm a thief, but I wouldn't do *that*, there's no way I'd do that.

, When the client had left, the PO admitted to me:

PO: I was just saying that to see if he'd admit to see if he'd admit to it - I don't think he *did* do it.

The reader, like myself, is left to wonder why the PO should want to attempt to make the client admit to something which the PO believed he hadn't done. More generally, client's accounts of their behaviour during interview were met with responses such as.

That can be proved, can it?

There's no question of that?

Have you got a letter of confirmation that I can see?

This is not to suggest that clients were never believed. Discussing offending behaviour with a client, a PO stated:

Field note extract

PO: Last time I saw you, you were really optimistic about it and wanted to make an effort - I believed you then and I believe you now.

Nor is it to suggest that probation clients always told the truth. Although during my interviews with probation clients as part of the research most respondents, when asked if they had worked out a story prior to their report interview stated that they had not, at least one respondent admitted:

Client: I blagged 'em a bit - I said I was looking for a job and that when I wasn't - I thought I was going to prison.

But clients were only one 'source' in the process of social inquiry and whilst clients might be highly motivated to lie about their circumstances in order to avoid imprisonment, credibility as an exercise in self-preservation was something that clients and POs shared. For the PO, verification was an integral part of her role, which contained a responsibility to state

'a summary of the sources drawn on to prepare a report' (National Standards for the Supervision of Offenders in the Community, 1992, p.19).

The statutory basis of verification procedures began with the prosecution case and record of previous convictions. The implementation of a new statutory obligation for report writers to

'refer at least to the facts of the offences ... referring to prosecution papers and/or accounts given in court' (ibid. p.15)

meant that POs were also dependent upon inter-agency co-operation for this information but, during a transitionary period beset with confusion and disorganisation, this information was not always forthcoming. The following example is by no means atypical.

The client had been convicted of exporting drugs, which he secreted internally. He claimed that he committed the offence to help drug addicts he had been working with in a voluntary capacity, who were dying of AIDS and who were unable to obtain drugs for themselves.

Verification procedures proved problematic for the report writer, who confided to me that she had

Field note extract

PO: *no* information on this case, nothing from the prosecution - I've received numerous records (of previous convictions) for this name, but none of them are his ... I've spoken to someone I know at Drugline, who confirms what he says about the plight of addicts, I've spoken to his solicitor and rang various

people who might have known him through his social work, but no-one remembers him ... I have no way of verifying *anything* he's said ... either this is a very sad case, or he's trying to pull the wool over a lot of peoples eyes. I can't decide which.

In the event, the report read:

'Despite extensive enquiries I have not been able to obtain prosecution evidence or accurate previous convictions. I have, therefore, had to rely on information supplied by (client)'.

Being unable to confirm the client's version of events resulted in an escalating degeneration of client credibility founded on typologies. When the same client appeared for sentence, I asked the court PO her opinion as to whether she thought the client would receive a non-custodial sentence.

Field note extract

PO: If he does, it will be to return another day - you don't secrete drugs internally unless it's for a *lot* of money, especially with the knowledge of the risks that *he's* supposed to have. Do you know who those people are with him?

AP: No, he did say during interview that he had some homeless people staying with him.

PO: He *means* he's running his own racket more like, they look *very* dubious types to me.

AP: One man looks very ill - perhaps he's an AIDS victim.

PO: More than likely, it makes me wonder if (client) is homosexual.

AP: He said the AIDS sufferers he has contact with are heroin addicts, he never mentioned homosexuality.

PO: I wouldn't believe a word he *did* say.

But whilst lack of sources could negatively discredit clients, consultation with other agencies was sometimes positively damaging as in the following case:

Field note extract

PO: I've spoken to (clients) solicitor - it seems he's not as naive as he appears - apparently there's a trend, which I knew nothing about, to keep adjourning cases until the defendant has been able to obtain another copy of his driving licence - that way, he hands one in to the court when he's disqualified and keeps the other to use as a roadside producer. They think they can take us in with these tactics, they must think we're stupid - it bloody annoys me.

Whilst verification procedures that employed consultation with other agencies involved a hierarchical construction of credibility whereby the client's version of events was subsumed, *lack* of inter-agency co-operation, coupled with the pressure of time allocated for report compilation, meant that report writers were often unable to meet their statutory responsibilities to the court. This could have repercussions in relation to PO credibility. To request a further adjournment would almost certainly be perceived as an inefficient waste of resources (that is, court time), whilst to proceed without this 'factual' basis became

Field note extract

'an exercise in covering your own back - you have to go through this fruitless procedure of sending a letter (to the CPS) requesting papers so that you can state for the court in the report that you haven't received them' (PO).

Thus, where this information had not been verified, it was routine for probation personnel to state as much in the final report. However, phrases such as

SIR extract

'I have not been supplied with the prosecution account of his present offences'.

were routinely employed in written reports even prior to the statutory obligations of the new Criminal Justice Act and, therefore, related directly to client versus PO credibility.

From the PO's perspective, it was a necessary caution because believing clients, even those who had admitted their guilt from the outset, held implications for the credibility of report writers, who were sometimes called upon to justify the report to sentencers. Two such cases were discussed at a Probation Liaison Committee (PLC) meeting.

The first involved a convicted burglar. The report recommended that the case be disposed of by way of a conditional discharge - a decision based on the PO's belief that the client's involvement in the offence had been peripheral. In the event, the client was sentenced to a term of imprisonment for, what emerged in court as, his central role in the crime. Due to the disparities between the client's account and the 'facts', the magistrates had returned the report to the senior probation officer, who was then called upon to defend the PO and the image of probation at the PLC:

Field note extract

PO: I'd just like to put this case in context. The offender failed to keep two appointments and then turned up on the day he was due in court. The PO, rather than delay the court process, decided to compile the report and fax it through to (the probation office convenient to the court). She is an excellent PO - the client had told her that his involvement was minimum, that he was a 'look-out', and she believed him. In fairness, she *had* tried to verify his version of events with his solicitor, but was unable to contact him. She rang the probation court team, but it seems that the court PO had not been called in at the request, so the court PO was unable to verify his account. The officer decided to go ahead with the report, as I have said, rather than

delay the court process further. On hindsight, she recognises that it would have been better for all concerned if she had requested a further adjournment.

In so far as the onus of responsibility was not placed entirely with the PO but, rather, presented in terms of client credibility and lack of inter-agency co-operation, this was an exercise in self preservation which, although superficially challenging to the court in its declaration that the court PO was not consulted at referral, stressed the importance of 'not wasting court time'. The report writer was in attendance at the meeting but was not identified. The sentencers in this case were not present and members of the bench who were did not wish to comment on behalf of their colleagues.

The second case discussed related to a woman convicted of fraud. The offender had told the report writer that she was the single parent of one child, who lived with her. But magistrates found that, according to the defendant's financial situation as set out in the report, this could not be the case as the receipt of benefits only amounted to those awarded to a single person. Again, the senior PO rose to defend the report:

Field note extract

PO: She was, in fact, a single parent - but the child wasn't living with her.

Mag: Didn't the PO attempt to verify her status?

PO: Obviously not sufficiently enough - the PO should have been aware from her benefits, but

Mag: Perhaps a home visit should have been carried out.

PO: Yes, but if the child had been visiting her that day, the PO would have assumed the child was living there - I'm afraid it's ...

Mag: Why would she lie about this?

PO: Fear of custody.

Although an inefficiency was acknowledged, the error was explained in terms of the difficulties faced by POs in ascertaining client accounts, as well as clients' motivations for lying. But the recourse of sentencers to complaint and the consequential accountability of POs means that client credibility should properly be analysed in relation to PO credibility. As in the preceding case, verification procedures sometimes called for external visits.

External Visits and Verification

The majority of report interviews took place at the probation office. As we have already seen, the environmental setting in which the report interview takes place sometimes related to PO safety and this, in turn, was assessed, at least in part, according to perceptions of clients. That is not to imply that all clients seen at the office were perceived as 'dangerous' - time and workload were also of the essence in both the organisational and systems context of the process of social inquiry. POs were obviously able to see more clients per day in the office than would be possible in the case of, say, home visits, and this was important to the systems context in that it reduced delay to the court process. But, against a background of increasing emphasis on efficient use of time and resources, external visits represented the exception to this rule of cost-effectiveness and it is, therefore, important to understand the motivations behind them and their part in the process of social inquiry.

As already stated, the objective of social inquiry is concerned not just with the individual, but with contextualising the individual. Previous research suggests that home visits are made only to those clients living in a family situation, particularly those with a serious criminal record. Within this, visits in relation to men are employed to meet and assess significant others in men's lives, whereas such visits in the cases of women are used to assess what kind of home they maintain (Eaton, M., 1985). The findings of the present study supported this to some extent.

Home visits to female clients were not necessarily related to home maintenance, although women's' domestic role played a part in them. After repeated failed office appointments with one woman the PO concerned stated to me,

Field note extract

PO: More problems with childcare arrangements - I've arranged to visit her at home.

On our arrival at her home, the client sent her children to another room and confided to the PO,

Field note extract

Client - I've told the kids that you're people who

work with me.

The PO expressed her willingness to collude with the client who, in this case, obviously did not want to either worry her children or discredit herself to them.

But, whilst home visits reflected a division of labour by gender, it related in this case to the practicalities of client-contact whereby context dictated the home visit rather than the home visit being arranged for the purpose of contextualisation. POs did not necessarily accept or support this situation. The PO in this particular case stated to me after the interview,

Field note extract

PO: Poor woman, she's got so much on her plate - *and* she seems to accept that her *husband* should punish her! He hardly seems supportive - when she said he gets sick of looking after the kids! (Whilst the client worked extra shifts to clear rent arrears that had mounted up due to her falsely claiming housing benefit).

But, whilst home visits to women offenders occurred in their gender context, similar visits to men were not necessarily conducted in order to meet and assess significant others in their lives. When I asked one PO why he was visiting a known client at his home, he replied:

Field note extract

PO: To make sure he lives there for one thing! But I would do a home visit as a matter of course, unless it's a single person who lives on their own - in which case there's no point.

Whilst the dismissal of home visits to single clients implied a desire to meet the client's partner, it was not necessarily the primary objective of the visit. In the preceding example, the partner was also already known to the PO. Similarly, the rider that the PO would do a home visit 'as a matter of course' suggests that criminal record was not necessarily relevant to home visits other than when, as already discussed, the client was considered 'dangerous' due to a history of violence.

External visits were not always home visits. In one case, a PO arranged a second meeting with a client at his place of work. When I inquired as to the motive, the PO replied

Field note extract

PO: I want to see him at work to check it out really - he had a very expensive jacket on (when he attended the office interview), although I suppose he could have bought that when he was employed - but he had that 'salesman patter' about him.

Whilst comments such as 'I want to check it out because he had that salesman patter' illustrate a direct relationship between perceptions of clients and credibility, comments like 'I want to make sure he lives there' illustrate a link between verification and control. As such, external visits were a part of the verification process that were inextricably linked to client categorisation, credibility and control. That women's social status was more likely to 'necessitate' this procedure meant, therefore, that female clients were subjected, in this sense, to a greater degree of control than their male counterparts. But verification as an exercise in client control must also be analysed against PO credibility in the court context.

The Report and Credibility in Court

The report in court represents the culmination of role and function. As we saw in chapter five, areas of conflict arising from and relating to role were managed via strategies of prioritisation. One such area of conflict concerns credibility. A 'bad' report, as we have seen, could undermine PO credibility and result in serious repercussions. In order to avoid such consequences, report writers and court probation personnel devised various strategies aimed at both maintaining the overall image of the Service and self-preservation.

In the court context, it was the court probation liaison officer, and not the report writer, who, as a representative of the Service and an intermediary between her colleagues in the organisational setting and sentencers in the systems context, had the task of maintaining credibility. Given this task, the court duty officer sometimes undermined a report writer in a last-ditch attempt to maintain a favourable overall image of the Service. This required and resulted in an interventionist approach to the proceedings. Reading through a report in court on the day of sentencing, the court PO (who was not the report writer in this instance) commented to me:

Field note extract

PO: I don't believe any of this - it reads like a Mills and Boon ... (client) is just a con-man and this report writer has fallen for it ... I'm going to have a word with the clerk.

The PO conferred with the court clerk - a supposedly neutral court official - when the bench retired to read the report:

Field note extract

PO: I just want to point this out to you - none of this has been verified and, frankly, I don't believe him.

Clerk: Mm - well, it won't get by this bench - I'll draw their attention to it.

The clerk then went into the magistrates retiring room, presumably to inform them of this development, and eventually re-emerged to inform the PO that:

Clerk - I did try.

The defendant was sentenced to a six months imprisonment, suspended for two years. The PO obviously thought he 'deserved' more. She followed him out of court, where he was chatting to his solicitor, and commented to me:

Field note extract

PO: Look at him - those tears welling up in his eyes (when he was in court) were obviously another put-on. He's smoking in here! If he puts it out on the carpet, let's get him for criminal damage and breach of his suspended sentence - I can't stand his sort, poser!

In another case, the court duty PO commented to me:

Field note extract

PO: This (report) reads like something out of a film - do you think this is all true?

AP: PO believed her.

PO: It all seems a bit much to me, but it's tragic if it's true. I could smell drink on her today.

Because PO credibility revolved around client credibility, the written report represented a prioritisation of PO over client interests, which, in turn, effected court proceedings in ways other than we would expect. Rather than being an objective sentencing aid, reports also represented an exercise, for POs, in self-preservation. One aspect of this exercise, for the court duty PO, involved attempts to negate the version of events espoused by the report writer. In contrast, report writers themselves actively adopted a deliberate strategy to selectively distance themselves from their clients in the written report in order to maintain

their own credibility to the court. Of a client convicted after trial, who still maintained his innocence, one report writer confided to me:

Field note extract

PO: I shall have to include those magic words in the report - '*his version of events is*' - if I don't the court will question why I should take the defence view.

Satyamuriti suggests that:

'social workers seeking to maintain distance from their clients have an interest in sustaining client stereotypes' (cited in Day, 1981, p.74),

and that social distancing as professionalism is a means of safeguarding themselves from their client. The practice of distancing as professionalism qualified a tendency among POs during PO/client interactions to tell clients that the report was an opportunity for the client to put his version of events to the court. In reality, putting the client's version of events to the court amounted to a 'sell-out' of the client. This strategy occurs and can be understood in a broader context and it is a strategy that is not peculiar or exclusive to report writers.

'Although courts are occasionally misled, it is much more common for solicitors to deceive the client in the course of a bail application. Some of these speeches contain little except rhetoric, and are made for self-serving reasons ... The most favoured sell-out strategy involves distancing the solicitor from the client, so making it an application of the *client* not of the solicitor. In this way, solicitors seek to retain credibility with the court at the same time as retaining the confidence of the client' (McConville, M. et. al., 1994, p.180-181).

Located within its operational context, 'safeguarding themselves from their clients' amounted to an exercise in PO's self-preservation, obtained at the expense of their clients, in relation to the court. For clients, too, credibility is an exercise in self-preservation. But, whilst each

party involved in PO/client relations may be engaged in the same exercise, it is not on equal terms.

Lack of client control was an inherent characteristic of the process of inquiry that inevitably extended in some degree or form to the final document. Many offenders stated that they were never asked their opinion as to the accuracy of the report, or that they never saw the report until the day of sentencing when it was too late to make any alterations to it. One respondent said that the report had already been compiled from previous reports before he attended the interview:

'(The PO) didn't ask me if I wanted to read it. He said I'd seen reports before'.

The experience of another respondent demonstrates the inherent danger, disadvantage and irrelevance of this method of report compilation:

'I didn't like some parts of the report. It said things about what I'd supposed to have done to my sister, that I'd sexually assaulted her, but that was a charge that was dropped against me years before'.

Consultation did not in itself, however, advantage or safeguard the client. One offender said he was shown the report and invited to comment on it, but felt too embarrassed to say that he was unable to read it because he was illiterate. In reality, the written report, like the process from which it emanated and in which it functioned, reflected and reinforced disparities of power.

But the process of social inquiry not only inhibited the development of a positive working relationship and reflected the disparity of power between offenders and their report writers, it is evident from the following comments of offenders that it also added to the stress of the case:

Interview extracts

'I wish it hadn't taken so long. When they said they were putting the case off for another month I thought I'd have a nervous breakdown before they could deal with me, I just wanted to get it over with'.

'I'd have preferred to have been dealt with there and then, waiting made it even worse'.

'They should just deal with you if you've pleaded guilty'.

Interpretation and Construction

As we have seen, the interview dynamic itself involved power differentials which operated at different levels. Similarly, the interpretation of information submitted and/or extracted at the interactive level, and the image of the offender which materialised from this, was informed and shaped by client/PO relations, on one hand, and PO/court relations on the other.

From 'focussed interviews' with probation officers, Hardiker and Webb (1979) suggest that,

'explanations of deviancy offered by probation officers were wider than anticipated, encompassing both determinist and voluntarist accounts of behaviour. It is suggested that the structural context of probation work - utilitarian justice and casework treatment notions - creates more 'space' for offering a greater variety of explanations than has often been appreciated. And, in offering these explanations, probation officers do not necessarily reinterpret their clients accounts, which were sometimes accepted and at other times rejected' (p.1).

As we have seen, client credibility is linked to a hierarchichisation of typologies informed by a yardstick of 'normalcy'. Although not denying that

'the officer's view of his client is the outcome of pitting his theories against the 'data' of any one offender' (Ibid.p.12),

Hardiker and Webb suggest that to view social workers merely as 'agents of social control' (Cohen, S., 1979) is over-simplistic. Rather, it is suggested that probation officers submit 'action' or 'infraction' accounts of their clients' behaviour, assessed in relation to the seriousness of the offenders criminal and personal history and that these are

'structurally located, given the role of the probation officer in sentencing'.

But we should be sensitive to the structural location and role of the probation officer in the process of social inquiry, because it both influences the data in relation to any individual offender and determines the process of interpretation.

POs are not only obliged to take official accounts as the foundation of the database for any individual offender, but are also acutely aware that the written report is aimed at a specific audience - that of the court. In accordance with their statutory obligations, POs routinely presented the reasons for report writing to clients in terms of 'helping the court' to arrive at an appropriate sentencing decision.

Field note extract

PO: I'll just explain what the report is about - it's so that the court will have information about you, as a person, and from that they will be able to make a decision about the most appropriate way of sentencing you.

'Helping the court' influenced both the written compilation and structural content of the report.

Whilst 'helping the court' involved deferring to the court, even in minor ways, this deference, in turn, was a strategy of maintaining credibility. Similarly, cases were individualised, rather than individual, to meet the demands of the court. In practice, this meant that 'appropriate' sentence recommendations had less to do with the individual circumstances of the offender or the offence than the predilections of the court and availability of disposal:

Field note extract

PO (to client during report interview): It's not that the case is difficult, it's the system - it's my job to write the report for the court and the court say they're considering all options, which includes prison. It's my job to keep you out of prison - you're only a second time offender and community service seems a bit harsh, but I have to include it in the report because the (referral form) states 'consider all options'.

Thus, 'the system' placed restraints upon POs through their obligation to 'help the court', which, in turn, not only restricted their role in relation to 'helping the client' but, in the process, relegated any professional expertise relating to sentence-recommendations to what was available.

Field note extract

PO (to client during interview): Whether the court will think a straight probation order is high enough tariff - I mean, *I* certainly would, but the court might want something with more teeth, being as they've asked for a community service order. I mean, we *could* think about that, but, again, it's a bit high-tariff because it's actually an alternative to custody and I don't think that *these* offences actually *warrant* an alternative to custody, but it would actually give the court what *they* want, and they're the ones with power.

But sentence recommendations were not entirely confined to what was available, they were, as they have historically been, also determined by what was considered to be 'appropriate'.

Appropriateness revolved around typologies of the offender as much as it related to the offence, so that 'giving the court what they want' also involved presenting the 'right' image. In relation to sentence recommendations, this entailed various strategies.

Field note extract

PO (to AP): I can tell you now what the report will say - I'm going to recommend probation - it's a petty offence, (client) probably can't afford a fine, and it's what I call a tactical report - the court obviously *want* probation, because they've mentioned concern about his drinking.

Whilst 'tactical' reports such as this were usually compiled for what the PO perceived to be positive reasons, they were often achieved by negative means. In the following case, the PO explained such a strategy, employed with a view to obtaining a probation order as the means of disposal, to her client:

Field note extract

PO: I'll have to *say* to the court that I've discussed community service with you - I get told off by my senior for writing what he calls 'welfare reports', but you can sometimes present (client problems) in a negative way and it does the trick in court.

Such strategies confirm Cohen's (1985) observations that reports are merely 'accounting systems'. Whilst the PO in the preceding example may have been paying 'lip service' to the court, she was still, if negatively, complying with the court's wishes. In this way, PO's individual attempts or desires to help their clients were frustrated, at both the organisational and systems level, by power differentials which exist between themselves and sentencers. The interpretation of data relevant to the process of social inquiry, and the consequential construction of what was 'appropriate' therefore represented an act of compliance and deference, appropriate to role, which left little room for initiative or negotiation. Whilst POs 'professional judgement' was, thus, aligned with maintaining credibility through conformity, their clients were relatively disadvantaged in the process of social inquiry through its location in the wider administration of justice.

Although defendants voluntarily consent to report compilation, we need to be sensitive to what 'voluntary' means in this context. As one PO pointed out to his client at interview:

Field note extract

PO: You don't *have* to have the report done - having said that, if the court have requested it, my advice would be to *have* it done.

It could be argued that defendants chose to commit the offence and, therefore, placed themselves in that position but, again, as one PO surmised,

Field note extract

PO: It's difficult to put yourself in their position - who can say what any of us would do in similar circumstances.

Whilst the circumstances leading to offending are often complex and have their roots in the political, rather than personal sphere, what *is* clear is that both PO and client engaged in strategies of resistance and control. With regards to the written document, this not only involved interpretation, but also re-presentation.

'Legal representation in the magistrates court is not typically a process of defending accused people against their accusers since, even with representation, the vast majority of defendants appear to plead guilty' (Bottoms and Maclean, 1976, cited in Worrall, 1990, p.19).

Rather than being an adversarial exercise, then, legal representation undertaken by defence solicitors becomes a process of mitigation.

'Its unspoken goal is the 'normalization' of the defendant through a process which packages and re-presents the defendant as a coherent unity which is recognizable by the magistracy' (Ibid. p.21).

Although it is not the official role of the report or the report writer, the written report, exclusive to convicted offenders in the magistrates court, was often employed by defence solicitors, much to the annoyance of probation officers, as a speech of mitigation:

Field note extract

PO: Did you hear what (client) said about his solicitor - he's only ever seen him in court - it's outrageous, some of these solicitors! We do their job for them - I've watched them in court with their marker pens, highlighting bits of the report (to refer to in mitigation) - they're like bees round a honeypot for reports in court - all they get paid, you'd think they'd *earn* it - I resent the fact that they get double my salary for *my* work! Reports are for the court, not for solicitors.

Whilst the distinct roles of defence solicitor and probation officer are not denied, similarities also exist. Solicitors officially represent clients but, in the process, make assessments, whilst probation officers officially make assessments but, through the report, represent clients in the legal sense, even if unwillingly as in the preceding example. Both are officers of the court, who adopt similar strategies in relation to their clients.

In so far as the report represents an oral intervention into the proceedings it appears to award less articulate or muted clients an opportunity to speak. But, like the representation of the defence solicitor, this is subject to specific terms. The terms are that the offender becomes the object of another's discourse. Whilst this seems to be in contrast to selling the client out through an employment of his own discourse the effect is not dissimilar, in that the client is now sacrificed in terms of self. During interviews I conducted with them, probation clients expressed their awareness that this translation represented a form of control:

Interview extracts

'Probation should have just wrote down what *I* said, like the police statement, and showed the court that, to have my own words to give to the magistrates'.

'I felt like *they* were in charge really'.

Professional discourse is recognised as and elevated to the status of 'expertise' within the judicial context in which it ultimately operates (Worrall, A., 1990, p.19). In effect, this represents an hierarchical construction of differing versions of reality (Young, A., 1991). When asked whether they thought the report represented their own view or that of the PO, respondents replies varied:

Interview extracts

'It was my own point of view'.

'He just wrote down what I said'.

'It represented my view - no - probations view really - theirs was better than mine, they said things better than I could say them'.

'I don't know really - at the end of the day, I wouldn't have used those words'.

But acknowledgement of the dominant presentation is not necessarily perceived by clients as the most satisfactory:

Interview extracts

'As I was telling her she was writing it down in her own way - it made it sound either worse or better'.

Others stated that they would have preferred to speak on their own terms:

Interview extracts

'I think a person should be able to just stand up and say, you know, be *asked* them questions in the court really, because you're in person then and the answers come out how *you* want them, rather than what the paper picks up'.

In relation to solicitors,

'these practices are justified ultimately on the grounds that defendants have chosen to engage their services. Contracts have been entered into freely via the fiction of 'giving instructions' and defendants are presented as remaining the knowing subjects/authors of their own discourses' (Worrall, A., 1990, p.22).

But defendants cannot choose their report writer as the following example illustrates:

Field note extract

Solicitor: Do you know who will do the report?

PO: 'X' I should think, he's seen him before.

Solicitor: He doesn't like him.

PO: Well he'll probably get him - he'll just have to put up with him, he's not in a position to be choosy.

Similarly, reading the written document is an exercise in interpretation. Whilst POs were acutely aware of their audience when writing reports, some clients were also aware of this. When asked if he thought the report represented his point of view, one client replied,

'It depends on how its read really'.

Client consciousness qualifies, to some extent, Carlen's assertion that the rules governing the administration of justice are not freely agreed upon by all participants. But an appreciation of the 'rules' does not indicate equality of participation in the 'game'. Although some respondents said that they felt so intimidated and alienated by the court process that they were relieved not to have to say anything,

Interview extract

'I didn't take much notice of what was going on in court - I was, sort of, *petrified* most of the time' (Offender),

others felt humiliated by both the content of the report and the process of which it was part:

Interview extract

'It feels degrading really, having something written about you - I mean, everybody knows then - I bet they're having a good laugh - I felt a bit ashamed really - it's like going to a complete stranger, but they know everything about you - I found it hard' (Offender).

Mutuality in Social Inquiry Reports

To return to the question at the opening of this chapter - that is, to what extent is each party involved in the PO/client interaction aspect of report compilation able to actively contribute to the process of social inquiry?

The process of social inquiry aims, and claims, to contextualise the offence and the offender. The report writer's role in this process was to make an individual assessment of the case (the offence and the offender), based on 'professional judgement', with a view to assisting the court in reaching an appropriate sentencing decision. But a deferential relationship to the court that is formally enshrined in probation practice meant that the format and content of reports was imposed by the court. Whilst 'professional judgement' was limited, on one hand, by what was available it was informed, on the other, by 'common-sense' notions of what was 'appropriate'. The latter contained a hidden agenda that, in practice, involved the categorisation of clients according to 'typologies' and the classification of offences. The image of the offender which materialised from this was often a negative one. Although it was sometimes constructed for what the PO perceived to be positive reasons relating to the interests of the client, PO credibility was a major consideration in report compilation and

particular strategies aimed at maintaining credibility were incorporated into the process of social inquiry and the written report.

For their part, offenders viewed the process as intrusive and much of the information as irrelevant. Although they also associated particular typologies as being conducive to a positive image of themselves in the court context and engaged in their own strategies of self-preservation accordingly, they were relatively disadvantaged and powerless in the process of social inquiry in that they were only able to contribute to it on specific terms.

Distancing qualified a tendency among POs to tell clients that the report was an opportunity for them to put their version of events to the court. In reality, the report was the result of interpretation and reconstruction that amounted to re-presentation as opposed to representation. In this way, contemporary probation practice de-contextualised offenders and re-constructed their circumstances in ways meaningful to the systems context of reports. In that such a strategy conformed to the techniques of other actors in the court arena, it perhaps reflected the non-adversarial nature of court-room practice as much as the non-adversarial role of the report writer within the judicial system. But such techniques demonstrate that contributions to the process of social inquiry need to be understood in relation to the context in which they both emanate from and ultimately operate.

Within this context, power differentials operated on a number of different levels that informed and constrained probation practice and marginalised offenders, who became incidental rather than central to both the process of social inquiry and the written report.

These power differentials reflected the imposition of the function of the report as a sentencing aid and as a tool in PO credibility onto the role of the report writer in relation to the client and the administration of justice.

As such, the process of social inquiry needs to be understood in terms of a triangular relationship between the court, PO and client. This relationship and the power differentials which emanate from it not only inhibit the degree of mutuality in report compilation but also

raise questions about the effectiveness of reports as a sentencing aid. This is the topic of the following chapter.

Chapter Seven

The Report As An Event

We have seen how the, historical, role of the report writer as an officer of the court and the function of the report as a sentencing aid are imposed upon and inform probation practice relating to report compilation at the interactive and organisational level. This chapter is concerned with the report as an event. It will examine the operational meanings of role and function as they relate to the report as a sentencing aid in the systems context.

In that they supposedly represent an assessment of appropriate sentence based on the report writer's professional judgement, sentence recommendations would seem to epitomise the relationship between role and function. Various studies have indicated a positive association between recommendations and sentencing (Thorpe, 1979, Stafford and Hill, 1987). But statistical data alone fail to disclose the mechanisms by, or context in, which either correlations or disparities occur. Report writers tend to define 'successful' reports as those which have resulted in a 'followed' recommendation at the sentencing stage. But 'successful' reports, in this sense, are not necessarily 'effective' in the sense that the report writer has been influential in exerting her influence over sentencing decisions. Rather, there may be various explanations for 'followed' reports, not all of which are necessarily related to the ability of probation officers to influence sentencing decisions by gaining the acceptance of sentencers. In this sense, 'effective' reports are dependent upon the probation officer's recommendation, on one hand, and the sentencer's accommodation of this, on the other. Even where this occurs, it does so within a complex situation that makes the measurement of patterns and outcomes problematic, not least because 'successful' events may be measured differently by different people.

In the broadest context, sentencing strategies and philosophies are relative to any given particular political economy. Alternatives to incarceration were developed as much for economic reasons as for any humanitarian desires, but these have in turn been relative to

ideological perceptions of the nature and rate of crime. A recent report of the Government's Chief Inspector of Probation acknowledged that

'the probation service faces a credibility problem with both the courts and the media ... in the wake of events such as the James Bulger case and the apparent "out of control" crime wave and media hysteria, the probation service had to work hard to demonstrate its effectiveness' ('The Guardian', 2/2/1994).

Whilst 'effectiveness' has always contained an economic element, the traditional welfare ethic of probation officers stands in conflict with current calls for and trends towards harsher punishment that sentencers' credibility is frequently measured against. But if the political context of sentencing currently stands in conflict with the traditional ethos of the probation service, the report and writer are also among several potential and sometimes competing influences in the immediate operational context.

Within this 'localised' context, report writers have historically been assigned a marginal or quasi-legal status. This might be important in a setting where events or outcomes are determined by the ability, or collusion, of particular actors to exert influence. Similarly, events might be measured in different ways from different perspectives. What magistrates and/or report writers define as 'successful' may not necessarily be defined as such by offenders, for example, even when there is a correlation between recommendation and sentence.

In order to distinguish 'successful' and 'effective' reports, a qualitative analysis of 'followed' and 'not followed' recommendations is required. This necessarily includes extracts from interviews with magistrates and offenders relating to their perspectives of the report as a sentencing aid and as an event. An acknowledgement and examination of these perspectives enables us to throw some light on the role of the report writer and the function of the report in the context in which they ultimately operate and in a way that statistical data do not allow. From this, we can draw broader and more in-depth conclusions relating to the significance of

reports and/or effectiveness of report writers in decision making processes relating to sentencing.

The Study Sample

Of the 57 cases involved in the present study, only 17 were 'complete' cases in the sense that I had attended every stage of the case, from request of a report in court to eventual disposal. In analysing the relationship between recommendations and sentence, I have employed only 'complete' cases. This is important because 'partial' cases - that is, those where observation has been limited to only the interview stage, or to interview and sentence but not request - although relevant to particular aspects of the study, do not present a full picture of all of the potentially influential variables relating to recommendation and sentence and, as such, 'complete' and 'partial' cases are not comparable for this purpose.

Of the 17 cases analysed, 8 recommendations were 'followed' by sentencers. Thus, whilst almost half of the reports in this sample were 'followed', the majority of reports in the sample (9/17) were 'not followed'.

Closer scrutiny of the individual cases reveals that the explanation for either correlation or divergence cannot be solely attributed to the report writer's ability or inability to exert influence over the sentence decision-making process.

Followed Reports

Influence and Prediction

Two 'followed' reports corresponded with sentencer's preliminary indication of disposal at the report request stage. This would suggest that 'followed' recommendations may be the result of prediction as opposed to influence on the part of the probation officer.

'The question of how far probation officers, by their recommendations in social inquiry reports, influence rather than predict the nature of sentencing decisions, is a complex one. Various studies (see Thorpe, 1979, p.11 for an account of these) have

indicated that around 80% of recommendations by probation officers are 'followed'. Some writers, notably Davies (1974), and Carter and Wilkins (1967), have suggested that at least one element in this apparent 'influence' is a capacity by probation officers to anticipate the sentence most likely to be imposed and to recommend accordingly. Davies in particular suggests a circular influence ('closed loop of influence') between sentencers and report writers, each gradually modifying their own behaviour in the light of feedback received via the decision or recommendation of the other' (Roberts and Roberts, 1984, p.82).

The 'closed loop of influence' has a statutory basis. When requesting a report

'a sentencer may give a preliminary indication of his or her view of the seriousness of the offence and the sentence which may be appropriate. Such a view will set a starting point for the preparation of the report' (National Standards for the Supervision of Offenders in the Community, HMSO, London, 1992, p.14).

The statutory discretion awarded to sentencers undoubtedly placed report writers in a relatively subservient position. Although the report writer is encouraged to:

'be vigilant about including information which may assist the sentencer in reaching a *final* view on sentencing' (Ibid., own emphasis),

the probation officer's role as an officer of the court thus incorporates a duty not to undermine the role of the sentencer, who has ultimate responsibility for passing sentence. Thus, in practice, the 'closed loop of influence' was something of a linear construct, whereby direction from the bench was incorporated into probation practice and, subsequently, redirected back to the sentencer. This not only left little room for manoeuvre or discretion on the part of probation officers, but also reinforced the sentencing predilections of the court. This raises the question of what sentencers look for in a report. In a study of magistrates at work in the juvenile court, Brown (1991) found that:

'Firstly, reports were assessed in terms of their ability to act as guides towards an appropriate disposition. This emphasis on the recommendation needs careful examination. It should not be assumed that magistrates necessarily 'follow' recommendations; rather magistrates assess a recommendation on whether or not it is in line with their existing preferences' (Brown, A., 1991, p.25).

Brown discovered that magistrates 'preferences' did not necessarily relate to 'realistic' proposals in relation to the offence but, rather, in relation to the offender's location on a scale of social integration, itself defined in relation to 'extreme' points of reference.

'Hence, while in general the interviews with magistrates uphold the position taken by several writers that decision makers selectively interpret data in accordance with provisional decisions as to disposition (Hogarth, 1971; Asquith 1983; Bankowski et.al. 1987), in grey or borderline cases social background could and did make a difference' (Brown, A., 1991, p.26).

These findings support Walker and Beaumont's (1981) observations that the legal process, like the State, assumes a fetishised form whereby the surface effect of neutrality conceals underlying relations.

In following the signal, the report writer reinforces these biases. This was reflected in and further compounded by report writer's adherence to the categorisation of offenders in terms of their social, rather than criminal, status in the general content of reports. Whilst this was beneficial to some offenders, it was, as Brown indicated, damaging to others.

My own interviews with magistrates, in the adult court, revealed that sentencers acknowledged the existence of this injustice:

Interview extract

Mag: To be perfectly honest, you sit there and think, well, the previous bench have asked for a report, so they must be thinking of certain things - you listen to the prosecution and defence and then read the report - so, really, you've got a good idea what the previous bench were thinking by this time ... being realistic and honest, your judgement is already guided towards the same thinking, and there's insufficient in the report of an individual nature to go outside those boundaries, that's why more individualised reports would be better - lets face it, *all* defendants can't be 'quiet', 'reserved', 'well-mannered', 'polite' - we get some right little louts in here and I don't know why the report doesn't *say* that .. it tends to categorise the defendant, and if the probation officer categorises the defendant, it leaves us little else to do but categorise them - it's just going through the process. I think it's important that the report should *make* a recommendation, but the recommendations follow the line in which they're taken - you can virtually *tell* what the recommendation is going to be, and that's broadly because in categorising the defendant, they categorise the recommendation as well. Probation officers know the offender's personal history, but they *also* know the ways magistrates are likely to react. Very few recommendations are way off-course, but I don't know whether that's because they've listened to the prosecution, the defendant, or whether they are just playing a part in the process'.

Whilst we might expect that a positive association between signal and recommendation would result in a 'followed' report, these cases illustrate the need to distinguish between 'successful' and 'effective' reports. Given that, as we have seen, report writers are obliged to at least *acknowledge* the signal, their role in the process of the administration of justice might be analysed in terms of deferential class relations. As such,

'Probation officer records and social inquiry reports might be studied as 'accounting systems'. They provide images of the delinquent (as 'deprived', 'disturbed' or 'depraved') which are used to justify particular control decisions. But their actual model of intervention usually reverses the positivist sequence of diagnosis-then-treatment. The *first* stage is to decide on the best treatment. The reports and case histories are constructed accordingly' (Cohen, cited in Fielding, 1984, p.18).

That a positive association between recommendations and sentence correlates with a positive association between signals from the bench and recommendation suggests that, in some cases, 'the first stage' is decided by the bench.

Custody-specific Signals

The two cases cited in the preceding section related to specific signals from the bench - one concerning the offender's alcohol problems, the other indicating a preference for a community service order to be imposed as an alternative to custody. Neither of these signals present an ideological dilemma for the report writer. In contrast, custody-specific signals are likely to produce a divergence between preliminary indication and recommendation and, if the recommendation is then 'followed', would seem to amount to an 'effective' report.

The professional ideology of report writers traditionally espouses a commitment to securing non-custodial disposals for their charges, although in private POs sometimes admitted that they were of the opinion that incarceration was 'deserved':

Field note extract

PO: He should go down, the (victim) must have been
absolutely terrified - I'd give him a month.

The sentence imposed was, in fact, three months imprisonment - to which the PO remarked:

PO: He deserved it.

As such, non-custodial recommendations represented a conflict between personal and 'professional' opinion in some cases. In any event, report writers recognised that community sentences were not always practical or realistic options:

Field note extract

PO (Senior PO): says its our job to keep people out of prison, but that's a nonsense really - for one thing, we can't keep *everyone* out and, for another, our role doesn't end there as far as I'm concerned - if it did, we'd just be diverting people from the courts to other agencies - where do *we* come in?

For their part, sentencers acknowledged this conflict between the function of the report as a sentencing aid and the ideological aspect of probation officers' professional role. This conflict between role and function undermined, in magistrates' views, the objectivity of reports, as the following interview extracts reveal:

Interview extracts

Mag: One option open to us is custody, and you *never* see that in a report. I can understand the reasoning. I've only ever seen it once, and that was because the defendant was trying to get out of the army and that was one way of doing it, so we obliged.

Mag: I have to say that I've never really expected reports (to represent an objective view of sentencing options), because I understand POs and their training. It's very difficult for them, with that dual role they play of befriending and, as it were, policing the person. It's very difficult for them to

recommend anything that's punitive. In a way, they can't step out of role. They're not *allowed* to say that a short custodial sentence might bring someone to their senses because they would have to, as I understand it, justify it to their senior people and they can't *do* that.

This awareness of irreconcilable differences between the sentencer and the report writer relating to custody as a means of disposal, coupled with the limitations of a non-custodial principle in practice, may account for some 'unsuccessful' reports .

Three followed reports in the sample received custody-specific signals. It would, then, appear from this that the report writers in these cases successfully managed to exert sufficient influence over the sentencing process to divert these offenders from custody.

Case one

Case one involved a young man convicted after trial of theft. The offence related to theft of property from an elderly woman, whose bag was snatched as she walked along the street. In spite of the finding of guilt, the client maintained his innocence. 'Not guilty' clients presented problems for report writers, who were unable to address offending behaviour if this behaviour was denied and this was reflected, in this case, in the report to the court:

'(Client) finds it hard to accept the court's decision and believes he is the victim of mistaken identity, therefore I am unable to offer any comment (relating to the present offence). Due to him maintaining his innocence, I do not believe that a probation order would have any real value in attempting to address his offending behaviour. Therefore, I have established that work is available on community service should Your Worships wish to consider such an option. Alternatively (a financial penalty)'.

At sentencing, the defence solicitor faced a similar dilemma to that of the probation officer in respect of the 'guilty' status of his client, but elaborated rather more on the circumstances of the case:

'The contents of the bag were found in the possession of another, who has been dealt with at the Crown Court and is now serving a term of imprisonment. It would be less than frank to say that *this* case will be subject to appeal. He doesn't accept the courts finding of guilt and, therefore, I cannot mitigate. His personal circumstances are set out adequately in the report'.

A community service order was imposed but, whilst this sentence reflected the recommendation of the report, it did not necessarily reflect the report writer's ability to exert influence over the sentencing process.

Brown (1991) has shown that reference to personal history is often an influential factor in securing a specific disposal. In this particular case, it was unlikely to have assisted the offender as this aspect of the report made numerous references to the client's 'criminal family' context:

'I have interviewed the defendant twice at my office for the purpose of this report and have met him on several occasions during my professional contact with other members of his family ... His family have had lots of involvement with the criminal justice system over the last year ... charges against his mother, sister and himself were recently discontinued' (SIR).

Whilst the practice of contextualising clients in relation to their family background is historically embedded in probation practice (and includes references to 'good' as well as 'criminal' families), it is difficult to envisage what objective need this fullness of information fulfils in recommending or assisting sentencing decisions.

Carlen and Powell (1979) suggest that the purposeful selection of material ('filtering'); a respectful recognition of the courts viewpoint, with the use of phrases such as 'whilst not

underestimating the seriousness of the offence' to open the way for more radical suggestions. and reference to 'authoritative knowledge' are strategies employed by report writers to maintain their credibility to the court. A 'flooding' of, seemingly irrelevant, information may serve the same purpose. Brown (1991) found that:

'Magistrates exhibited a definite notion of criminal culture which they sought to identify, partly from their own background knowledge and partly from the social inquiry report. It was common for offenders to be seen as existing in a network of sub-legal family activities being socialised into anti-social values. Thus, the involvement of the rest of the family in delinquency was seen as an important control indicator' (p.46-48).

As such, negative 'flooding' might have served to maintain PO credibility through conformity to and alignment with the court's values that, in effect, distanced report writers from their subjects.

In contrast, the solicitor's address, although failing to challenge the defendant's 'personal circumstances', was instead conveyed in legalistic terms. In particular, reference to appeal may have influenced the decision not to impose a custodial sentence. For their part, report writers are restricted, in this respect, by their non-adversarial role and their duty not to challenge the court and, thus, in their ability to exert influence over the decision-making process.

Case Two

The second case presented far fewer problems for the report-writer. It involved, in the words of the report, a defendant who:

SIR extract

'Lives in a four bedroomed house, situated in a pleasant area ... (whose) ... parents are aware of his offending and are deeply upset ... (who) ... had a normal, happy

childhood ... obtained four 'O' levels ... obtained a position at (a bank) ... moved to work as a management trainee ... then joined (a civil service department) ... (client) has not previously appeared before the court on a criminal matter ... he also stated that no-one in his family had ever been in trouble ... he is shocked by his own behaviour and cannot understand why he committed the offence ... he now feels his life is in pieces'.

In the words of the defence solicitor at sentencing, constructing an image of the offender was:

Field note extract

'relatively easy in this case, because here is a young man who has always been well-behaved, comes from a good family and, for no apparent reason, offends. In the process he has lost his job - I think the report mentioned that he worked for the Inland Revenue - and he, very honestly, admitted what he had done to his employer and tendered his resignation. I think he needs help and guidance and would respond well to a probation order'.

The case was, indeed, disposed of by way of a probation order. Whilst this is contradictory, in that such a disposal is intended to address offending behaviour and prevent re-offending, given that the likelihood of re-offending was assessed as 'minimal', it formed part of the mitigating circumstances of the case. A de-criminalisation of the offender was obviously conducive to the diversion from custody. The presentation of him as an honest person belied his conviction for fraud, but confirms Brown's (1991) analysis that sentencers refer to a number of social control indicators in reaching sentencing decisions.

In case one the defence solicitor negatively reinforced an image of the defendant as criminogenic through his failure to challenge this perspective in the report, choosing instead to present the case in a legalistic framework relating to the defendant's not-guilty plea. In contrast, case two did not present any legalistic challenge to the court and the defence positively employed social indicators contained in the report as the basis of mitigation.

Whilst both cases resulted in a 'followed' report, only case one might be defined as an 'effective' challenge to the predilections of the bench. As this challenge was launched from a legal perspective, it suggests the greater influence of legal over social aspects to decision-making. But, in both cases, defence and report writer colluded in terms of social indicators and 'followed' reports might be due to this collaborative aspect of the process, rather than to the ability of either the report writer *or* the solicitor, *per se*, to exert influence over decision-making.

Case Three

The final case in this section also involved a collaborative approach. The case related to a conviction for grievous bodily harm, criminal damage, and theft. The injuries were inflicted when the client pushed a glass into his victim's face, who raised her hands to protect herself and, in the process, received a broken finger, in addition to bruising to her ribs inflicted during the struggle. The victim was the 'common law' wife of the client. Whilst acknowledging the defendants remorse, both report writer and defence solicitor abandoned their respective social and legal frameworks and constructed the case in terms of a personal matter that amounted to little other than a negative strategy of blaming the victim:

SIR extract

'In discussion about the offences, it would appear that (client) and (victim) regularly argued and fought, but (client) realises that he went too far on this occasion' (SIR).

Field note extract

'I don't wish to minimise the matter, but this was a domestic incident that got out of control. It has been a stormy relationship .. he would be the first to admit that he has a quick temper and, on this occasion, lost control ... there it is, he bitterly regrets what he has done and is anxious to get the matter behind him' (Defence).

The recommendation of the report that the client be referred to a violent offenders group was supported by the solicitor and imposed by the magistrates.

Although the issue of 'private' violence has, in recent years, been more widely acknowledged and addressed in the public arena, there is a tradition, slow to change, whereby:

'the legal system as a whole consigns the problem of marital violence to a status of relative unimportance (and) operates so as to leave, essentially untouched, power relationships in the family' (Pahl, J (Ed), 1985, p.111).

It could be that the preceding case goes some way to illustrating this, rather than demonstrating the ability of the report writer to exert influence over sentencing decisions.

Recommending All Options

The preliminary indication that the bench was considering 'all options' was a recognised signal to indicate that the bench were considering a custodial sentence. In following the sentence indication of the bench at the report request stage, many report writers adopted a literal interpretation of this coded message, with the exclusion of its specific aim, in their sentence recommendations.

One such case involved a woman convicted of housing benefit fraud. The report read:

SIR extract

'(Client) would be able to sustain a moderate financial penalty ... has been assessed for community service, although I consider that childcare arrangements would make it difficult for her to complete such an order ... (client) would appreciate having someone to talk to about her feelings regarding all that has happened and her present financial circumstances ... a short probation order could address these issues'.

The inclusion of a broad range of sentencing options hardly illustrated the report writer's ability to exert influence. Such a strategy was virtually guaranteed to secure success in terms

of recommendations being followed. But, *as* a strategy, it perhaps indicated a degree of non-conformity on the part of the report writer who, in a bid to obtain a preferred outcome for her client, ignored the coded significance of 'all options', applying it instead in a literal sense. To be precise, it amounted to 'playing the system', a strategy more commonly associated with offenders. But, at the same time, the guaranteed success associated with such a strategy served to maintain PO credibility.

Rather like 'work to rule' strategies, following the signal did not necessarily represent conformity in the strictest sense of the word. But nor did this category of 'followed' reports reflect success in terms of the report writer's ability to influence sentencing decisions.

At sentence, the proceedings in the housing benefit fraud case were somewhat rushed as the court was about to break for lunch. Sensitive to the client's childcare arrangements (and probably to his own schedule), the defence solicitor persuaded the magistrates to hear the case before they retired for lunch. In this context, the report was read whilst the solicitor addressed the bench, rather than the bench retiring to read or discuss its contents. Thus, whilst the report was 'followed', this may have been because no time was reserved to consider the alternatives. Or, again, it may be that the preferences of the bench were merely reflected and reinforced through the report in the implication that the woman was being adequately punished and controlled through her domestic relations:

SIR extract

'(client) broke down several times during interview, describing her shame at appearing in court and her fear of the outcome. She was ashamed of the lies she was telling and went to confession every week. Her husband now controls the money. and she says she now feels like a burden and suffers constant guilt, particularly as her husband has never been in debt and feels 'degraded' by it'.

Research has shown that the family as a site of social control, and the notion that a spouse will act as a guardian against re-offending, is a common argument in pleas of mitigation.

Similarly, reports writers employed family circumstances to excuse or explain offences or to justify sentence recommendations (Eaton, M., 1986).

Effective Reports?

Of the two remaining cases in the 'followed' reports sample, one received a preliminary indication that the bench would impose a community service order and was effective in achieving a probation order as the means of disposal, and the final case received no signal from the bench at all, but resulted in a probation order. Thus, these two cases would appear to constitute 'effective' reports.

Like the custody-to-probation fraud case in the 'custody-specific signal' section, the offender in the community service order-to-probation case presented few problems for the report writer, solicitor, or bench. He had pleaded guilty; had no previous convictions; had several educational achievements; was engaged in employment. His parents were going through the process of a marital breakdown, but, far from being a negative indicator, this was presented as a negative influence on a positive lifestyle - in fact, the report directly related this to his offending behaviour, which concerned obtaining and employing fraudulent motor insurance cover notes:

SIR extract

'(Client) tells me that during this period he was trying to keep out of his home as much as possible as his parents were attempting to reconcile their marriage. I understand he had also separated briefly from his girlfriend and he tells me his only consolation was driving in his car. The offences occurred during a period of unemployment ... I have discussed at length the context in which these offences were committed ... he conceded that he does not cope well with stress ... he usually drives around in his car to 'get away from it all' and this is clearly what was happening when he was made redundant and inappropriately trying to maintain his lifestyle. This,

coupled with the domestic circumstances at the time, appear to have led him to commit these offences'.

Sentence recommendation was also carefully worded so as not to challenge the court:

'As requested by the court, I have made an assessment as to (client's) suitability for community service. I understand he is suitable and work will be available for him. However, I would ask the court to bear in mind the defendants previous good character and the fact that, due to his employment commitments, he may have some difficulty completing such an order. I understand that he would be reliant on the goodwill of his employers to take a day off. I have therefore considered the alternatives available to the court. Given (client's) financial commitments, any financial penalty would only exacerbate his situation. I would recommend that the court make him the subject of a six month probation order, during which he would be confronted by the consequences of his offences and work would be undertaken to aid the development of more appropriate behaviour, particularly when coping with stress'.

This would suggest that effective reports are those which include 'desirable' social indicators, that are off-set against the offence, and which, in turn, are employed to justify proposals as to sentence. This amounted to a classification of clients in terms of their social, rather than legal, status - community service was seen as inappropriate in the preceding case, for instance, because the offender was employed. Against these control factors, the 'influence' of the report writer was through her powers of dissuasion, rather than persuasion and, thus, amounted to a negative strategy that operated within positive circumstances. As such, followed reports were not an objective sentencing aid but, rather, subjective constructs that conformed to over-arching philosophies.

Whilst the offences were not unusual, the next case was an interesting one in relation to the success or effectiveness of reports as a sentencing aid.

The offences related to fraudulent use of stolen cheque books. The case had been adjourned at the request of the defence solicitor on the basis that

Field note extract

'the values involved are quite high - there are also other matters, which could be admirably addressed in a report' (Defence).

The court probation officer had no signal from the bench as to preliminary indication of likely sentence. Rather, she was dependant in this case on signals from the defence solicitor - a supposedly equally biased view - to form the starting point of the report. The court PO conferred with the defence outside court:

Field note extract

Sol: This is entirely out of character - her fiancée was killed in a car crash outside (client's) place of work and she's been depressed ever since.

PO: Do we need medical reports do you think?

Sol: I don't think we should go *that* far - she does see her GP, but I don't know the extent of her depression.

PO: Is she working?

Sol: No - she did return to work for a while after the accident, but was unable to continue because she was depressed - she had a good job in advertising.

PO: Any children?

Sol: A boy, aged eight I think.

The signals from the defence solicitor were rather more elaborate than those normally indicated by sentencers and contained messages, regarding the 'appropriateness' of sentencing in relation to the client, as opposed to the offences. The case involved a single mother, who had suffered considerable stress and, as a result, was now receiving medical help for

depression. In the absence of signals from the bench, this information formed the starting point for the preparation of the report.

From the outset, the client was constructed as a victim. This was carried through to the report and, not surprisingly, given that these indications came from the defence solicitor, was reinforced through mitigation at the sentencing stage. It is, therefore, hardly surprising that the report was 'followed', as not only did it not challenge any preliminary indications but there was never any challenge to it. Similarly, it is impossible to say whether the report was effective in influencing the sentencing decision because there is no way of knowing whether it succeeded in changing that decision, given the lack of any indicated predisposition by the bench. Taking all of these factors into account, all that can be derived from this case is that the report writer followed the signals from the defence solicitor - thus, the 'success' of the report might be properly accredited to the defence solicitor.

We can derive little or nothing here relating to either the report as a sentencing aid or the report writer as an influential, or otherwise, party to the process of decision making, other than that whilst a positive association between signals from the bench and report recommendation illustrates the importance of formal court relations to probation practice in general and sentence recommendations in particular, reports which were still 'followed' in the absence of such communicative signals did not necessarily indicate that the report writer had been successful in exerting her influence over the sentencing process. Or, rather, it illustrated the invasiveness of less formal relations to the report writing process and, as discussed below, this, in turn had wider implications for the administration of justice.

For the moment, to recount the sample of 'followed' reports:

- Two of the eight followed reports showed a positive association between signal and recommendation.
- A further report adopted a literal interpretation of 'all options', and therefore was unlikely to fail.

- Of the three reports that received custody-specific signals, where followed recommendations initially appear to be the outcome of effective reports, success might be accounted for by other means (such as the potential influence of appeal on sentencing decisions, or a broader vision of justice, shared and reinforced by both sentencers and report writers, relating to the relative unimportance of domestic violence, or a seemingly indirect reinforcement of sentencing predilections through the employment of social indicators).
- One report consisted of a negative strategy within the positive circumstances of the case, this itself relating to 'desirable' social indicators.
- One case illustrated the invasiveness of less formal court relations over the report writing process.

In the two latter cases, the order imposed was for a longer period than that indicated by the report writer. This variation in degree, rather than kind, of disposal could in itself be interpreted as ineffective, in that it resulted in a harsher sentence than that recommended by the report writer. Since this occurred in three of the 'followed' reports in total, had these cases been located in the following section it would have significantly altered the overall balance of the sample from 8/17 followed reports, to 5/17.

Not Followed Reports

The majority of reports in the sample were not followed (9/17). However, reports that were not 'followed' were not necessarily unsuccessful in the sense that they reflected the report writer's inability to exert influence. Nor did these cases necessarily reflect harsher sentences.

Six of the unsuccessful reports received custody-specific signals at the request stage.

Because of the signal, we would expect these cases to reflect strenuous efforts on the part of the report writer to influence sentencing decisions. Predictably, there was a divergence between signal and recommendation and, since they were not followed, there was also a divergence between recommendation and sentence. This would seem to indicate that the sentence imposed, in that it differed from that recommended, reflected a failure, or inability.

on the part of the report writer to exert the necessary influence to divert the offender from imprisonment. But, just as followed reports were not necessarily effective in that they could not be attributed solely to the ability of the report writer to exert influence over sentencing decisions, reports that were not followed could not be attributed merely to the PO's failure to influence the decision-making process.

Limited Options

The first of these 'failed' reports involved a client convicted of two dwelling house burglaries; taking a motor vehicle without the owner's consent; and driving the vehicle without insurance. The client was already remanded in custody on another, more serious, charge for which, if convicted, he was likely to face a term of imprisonment. Because of this the report represented, and was part of, a wider strategy which reflected broader limitations:

SIR extract

'(Client) is fully aware that the Court view these offences very seriously. Due to the lack of co-operation from him in the past, I do not feel that a community disposal is appropriate but would ask the Court to take into account that he has spent the last six months in custody and to take this into consideration when deliberating these offences. I therefore would propose in this instance, a conditional discharge'.

At sentencing, the defence solicitor elaborated on the logistics of the recommendation:

'At first sight, the proposed disposal may seem wholly inappropriate ... for reasons we need not go into here, (client) has been in custody for a long time and what ever you do today he must remain in custody, therefore you cannot impose a community sentence. You can deal with him by way of a custodial sentence or a conditional discharge. I would suggest that the time already served is sufficient' (Defence).

The client was sentenced to six months imprisonment for each burglary, and no separate penalty for the other offences.

Disparities to this degree between recommendation (a conditional discharge) and sentence (custodial) represented tactical strategies, rather than conflict, on the part of both probation officer and sentencer, each of whom were hemmed in by the limited availability of options.

Client Influence

The second failed report involved a man convicted of driving whilst disqualified and, relatedly, driving without insurance. It was his third conviction for this offence and he had already served one term of imprisonment. He presented the reasons for his continual re-offending to the PO at interview in terms of a perceived social and judicial injustice. Loss of his licence in the past had resulted in loss of work and mounting debts, to the point where he had now been served with a repossession order for his house. In an attempt to avert the consequences of this, he had driven his car to obtain and conduct work in the building industry, an occupation in which, he felt, a driving licence was essential in order to transport the tools of his trade. This had resulted in re-conviction.

Because he felt that his situation had arisen as a result of his initial driving disqualification, imposed as a penalty for driving a vehicle with bald tyres, he saw the solution to both his financial and offence-related problems in terms of acquiring his licence again. The report writer saw this as an inaccurate perception leading to an illogical conclusion but, in a bid to express this view, the client had written a letter to the court requesting that they make an exception in his case. As such, the report represented a strategic attempt to hierarchically construct competing versions of reality with the aim of asserting the report writer's interpretation of events as 'truth':

SIR extract

'(Client) is clearly the author of his own downfall and he appears to have simply failed to grasp this. He cannot accept that he should continue to be disqualified when this causes him financial pressure due to his inability to find work. He is apparently a hard worker and the court may feel that they could make a community service order

in this case. Clearly, however, (client) does need to be made aware that he realistically cannot expect the court to make any exception in his case by returning his licence, especially when he has continued to flout the law'.

We might expect that the requesting bench's preliminary indication of a custodial sentence would be imposed in preference of the recommendation of a community service order, even given the strenuous efforts of the defence solicitor, couched in terms normally associated with probation, to persuade them otherwise:

Field note extract

'I may have some difficulty persuading you that another community service order would be appropriate. I do not believe that (he) is a *true* criminal. He has always been hard working, he keeps stressing that he has never hurt anyone. He was initially disqualified for having bald tyres, rather than for excess alcohol or something of that nature, and I *do* believe there's a distinction. He *has* to accept that driving whilst disqualified *is* a criminal offence, but he would *never* have committed these offences if his personal circumstances had not been so desperate. He is *not* a hardened criminal, taking the law into his own hands. He - and I - had hoped that the community service officer would be in court today, because he has a very high regard for (the defendant), and he is *desperate*, absolutely *desperate*. One day he *walked* to a job, carrying all his equipment. He has never really committed *true* offences - *all* matters on his record relate to driving whilst disqualified and if he could get out of this he will *never* be before the court again.

(The defendant is in tears by this time).

There is nothing else I wish to add. You can see for yourselves that he feels very strongly'.

But neither a custodial sentence nor a community service order was imposed. The client was given a suspended prison sentence. Whilst this is further 'up tariff' than a community service

order, it is not necessarily more punitive in effect. Both are likely to result in incarceration should the client re-offend, but a suspended prison sentence is less intrusive in the sense that it is non-supervisory. The disposal might, therefore, have reflected the sentencers' compassion for the offender, or at least be related to an acceptance of the client's version of events in that a non-supervisory disposal left him free to pursue and engage in work. The defence confirmed this version of events, going so far as to confirm his story that he was not a real criminal. The sentence imposed thus reflected a victory for the client's ability, or that of the defence, to exert influence over the decision making process to the extent that he/they were able to overcome the PO's seemingly lack of compassion for the defendant or her bias towards a punitive disposal. Thus, this case can be properly defined as an 'ineffective' report, but the ineffectiveness of it related primarily to PO/client relations rather than PO/sentencer relations.

PO Bias

The third 'not followed' report related to a client who, in the words of the report:

SIR extract

'lives with his parents in their privately owned, four bedroomed, detached property in a pleasant residential area. Home relationships were described to me as very good, this was confirmed by (client's father), who tells me that his son had never been a cause of worry and both he and his wife were shocked when the circumstances surrounding the case were made known to them. He left school with six good G.C.S.E. results. He is employed, has a steady girlfriend. He drinks very little and may smoke occasionally. I found him to be a youth with a pleasant personality who was very co-operative at interview. A little immature in some ways, but basically honest and industrious'.

Convicted under s.4 of the Public Order Act, the offence involved the use of an imitation firearm, which had been 'fired' at four other youths, who were not aware that it was an

imitation. After strategically listing 'all options', as indicated by the bench at request, the report writer 'respectfully recommends a monetary penalty' and 'a good telling off from the bench'.

That the case was disposed of by way of a community service order (and a reprimand) perhaps reflected the 'unrealistic' recommendation rather than a failed strategy. The recommendation itself was largely based on 'positive' social indicators. After questioning the offender with regards his interest in firearms, the report writer, satisfied that this was not 'unhealthy', believed that:

'he has learned his lesson and the Court may be prepared to put the whole incident down to the 'thoughtlessness and immaturity' of youth' (SIR).

That the court was not prepared to follow this course supports Brown's (1991) findings that when

'reports were assessed in terms of their ability to act as guides towards an appropriate disposition ... most magistrates welcomed, at least in principle, the practice of making recommendations (but their) strongest and most consistent criticisms of reports related to unrealistic recommendations' (p.25)

In imposing a sentence closer to their preliminary indication of appropriate disposal than to the recommended sentence, the bench perhaps sent another signal to the report writer who, in this case, was long serving and well known, in both a professional and personal capacity, to the bench and who, in addition, took the unusual step of being present in court when the report was submitted. That the report was still not followed given all of these circumstances indicates that it was subjective to the degree of being biased; certainly, this report writer did not have a reputation, in either the organisational or systems context, of being 'lenient' and it is doubtful whether such a recommendation would have been made for a similar offence in less 'desirable' circumstances.

No Recommendation

A further three reports made no serious attempt to influence sentencing decisions but, rather, made no recommendation or merely tokenistic proposals which reflected strategies in maintaining credibility.

The first of these concerned an offender convicted after trial of indecent assault.

SIR extract

'Whilst (client) accepts the verdict of the Court, he says that any sentence will feel like he is being punished for something he has not done. Consequently, it has been very difficult to address the community options. I have considered the possibility of a Probation Order, but I do feel that with his denial of the offence any Probation Supervision would be negative. There needs to be an acceptance of guilt in order to confront offending. I have discussed the possibility of a Community Service Order with (client), and he says he is willing to comply with the conditions of such an order. I have also discussed this with the Community Service Organiser for this area. She has expressed her reservations in as much as (client) is not accepting the guilty verdict. In view of the fact that an appeal is likely, the Community Service Organiser has requested that should the Court decide that this is the best disposal, then this order be set back until after the outcome of the appeal is known. It is felt that this is the best way forward to ensure that the order would be completed to everyone's satisfaction. In these circumstances, the Court may feel that the most appropriate disposal in this case would be the imposition of a financial penalty'.

Although a denial of guilt was one issue here, the problems that this presented for probation practice should be seen as a part of the report writer's broader concerns with maintaining credibility in the eyes of the court. Whilst the recommendation of a financial penalty is potentially damaging to credibility in that it is 'too lenient', this is preferable to the harsher alternative of a community sentence, which in the case of 'not guilty' defendants serves no

purpose and, therefore, is unlikely to succeed and, as such, amounts to being set up to fail - in which case, credibility is lost. The offender received a custodial sentence, but the issues are more clearly illustrated in the next case, which involved a client who had pleaded guilty from the outset.

The second client had been convicted of theft, committed during his release from a psychiatric hospital where he had been undergoing treatment relating to schizophrenia. Offenders with this type of medical problem presented a number of difficulties for the courts and their agents. This particular case had been adjourned on several occasions for the preparation of medical and/or social reports and, due to the lack of co-ordination between the different agencies involved, coupled with the court's limited powers to deal with him in terms of medical treatment and their reluctance to deal with him without it, the client had spent some time in custody on remand.

Reaching a sentencing decision of any description involved, to some extent, maintaining a balancing act. In this case, and others of a similar nature, this became a complex strategy. Two psychiatric doctors had been involved in the case - one indicated that the defendant was 'unfit to plead', whilst the other maintained that this was not the case because his 'propensity to offend may not be related to his mental illness'. The defence solicitor obviously wanted to be certain as to which course was appropriate, whilst, in the confusion, the report writer felt

'unable to assist the court' (SIR)

other than to state that he

'considers the defendants problems to be medical and support the application of (one doctor) that (client) be remanded to hospital under s.48 of the Mental Health Act 1983' (SIR).

At sentencing, the defence solicitor, quoting medical references which indicated that whilst 'it is possible to treat the illness, little can be done to prevent law-breaking', suggested that his client be made the subject of a probation order with conditions attached that he take

medication and stay away from the area in which the offences were committed. This brought strong protest from the court probation officer on the basis that it was a negative condition, difficult to enforce, and beyond the powers of supervision to ensure that medication was taken.

The latter point was referred to the court clerk, who advised the bench that this was permissible if imposed to 'improve a defendants medical condition'. In spite of strong protest from the Probation Service, the case was disposed of by way of a probation order with the aforementioned conditions.

Although the case reflected the complexities of decision making in cases of status-conflict, such as that between patient and offender, it is difficult to see how the report was of any objective assistance as a sentencing aid. In abstaining from any recommendation, the report represented an ineffective exercise in self-assertion and credibility on the part of the probation service. Unlike the ineffective report in the preceding ('Client Influence') section, this case directly related to court, rather than client, relations and, in that it amounted to a victory of the collective will of the court over that of the PO, demonstrated the marginal status of the PO in relation to competing elements of the decision-making process. The POs awareness of this became obvious from his comments during the course of the proceedings and at sentence:

Field note extract

'We're being undermined here ... They've set us up to fail'.

The final 'no recommendation' case concerned a client who had neither a history of mental illness nor was denying his guilt, but, like the two preceding cases, also represented something of a 'mis-fit' in judicial process.

Convicted of theft and being found on enclosed premises, the client was also a serving prisoner in relation to other offences. This status made sentence recommendation difficult, because disposal in such cases depended largely upon whether or not the defendant would be

freed by the court on the day of sentence. Even should this be so, the client had indicated to the report writer at interview that he intended to move away from the area. Although location in itself does not exclude any defendant from a supervisory disposal in a national Probation Service, a new and 'unverifiable' address has practical implications for both supervision and, relatedly, PO credibility. The report in this case read:

SIR extract

'Should he be freed today he will travel ... he has no money to pay fines ... he has no permanent address to serve a Community Service or Probation Order ... Disposal is, therefore, a difficult matter on which to advise the Court ... The Court will no doubt bear in mind that he has been in custody (almost two months) when deciding on appropriate disposal'.

This became a practical problem, acknowledged by the defence solicitor, at sentencing:

Field note extract

'The report concludes that you are faced with a very difficult sentencing exercise. It is *his* view that he *does* have a fixed address to go to - but the difficulty the probation officer was faced with is that there was no permanent address for the purpose of a probation or community service order. That, Sir, leaves the court in a difficult position - I don't imagine you are about to impose a conditional discharge, which realistically leaves you the options of a financial penalty or sending him into custody - he's not yet aged twenty one, so a suspended sentence is not appropriate and, really, he's pushed into a tight corner. If you feel that, because of the limitations, custody is the only option, I ask you to bear in mind that he has served five weeks already. *I* don't think you can be satisfied that you are not given the options of community service or a probation order ... it's a very difficult case indeed ... *I* hope that you are able to deal with it by way of a financial penalty'.

At this stage, there was some indication from the bench that they would be willing to impose a community disposal, but the court clerk - supposedly neutral - exercised his ability to exert influence here:

Field note extract

'Well, Sir, it seems he has a permanent address for the purposes of a fine, but not for probation or community service ... (to defence). Would he be willing to do probation?'

The defence stated that his client would be willing to comply with a probation order and, at this point, the bench retired to consider sentence. During the interim, the clerk approached the court probation officer to ask whether an assessment was carried out to ascertain suitability for a community service order.

Field note extract

PO : No, because he's not suitable if he has no permanent address. Has this address he's given the court been checked out?

Clerk: His solicitor says it has.

PO: I'd be very wary of this ... I've personally taken him to two bail hostels and he's given numerous addresses.

Clerk: But, you see, another bench would wonder why he was in custody at all with his record.

PO: He's been to four bail hostels and breached all of them, it's his own fault he's in custody.

However, bail conditions which state that a defendant is to reside at a bail hostel do not necessarily reflect the seriousness of the offence or any danger to the public and this client had been placed there on remand because he was homeless. Similarly, breach of bail hostel regulations itself sometimes relates to the conditions of the hostel, rather than the behaviour of the client. At least one hostel where this particular client had been residing was known to have a 'drugs problem', but, in the words of a probation officer:

Field note extract

'nobody says that in court'.

It could be that nobody gives a full picture to the magistrates either. After the clerk had been summoned to assist them, he again conferred with the court probation officer:

Field note extract

'Just to say that, the way things are going at the moment, they're not going to foist him on you'.

The case was eventually disposed of by imposing a custodial sentence. This outcome supports the findings of other studies:

Perry (1974) reported that the most common outcome when the probation officer's report contained no recommendation was a custodial sentence (55%) (cited in Roberts and Roberts, 1982, p.82)

This would seem to suggest that report writer's recommendations *are* influential, if their absence tends to result in a punitive sentence. But, as we have seen, lack of recommendation occurs in both the organisational and systems context and cannot be divorced from the technical link between available and appropriate sentence, nor from the issue of professional credibility. The latter was often achieved through a strategy in which the report writer distanced herself from the client and the absence of a recommendation was one means, although not always successful, of achieving this.

Recommending A Harsher Sentence

Whilst any sentence imposed in the lack of a recommendation is bound to be harsher than no sentence, just as a custodial measure imposed in the lack of a recommendation does not indicate the report writer's ability to exert influence, it does not automatically follow that, when a recommendation *is* proposed but not followed, a more punitive sentence results. In

the majority of cases where disparity between recommendation and sentence occurred, recommendation referred to a lesser sentence than that indicated by the bench at the request stage. But there were two cases in the study sample where the sentence imposed was less than that recommended in the probation report.

Case One

The first of these cases contained no preliminary indication of sentence. The report writer adopted a tactical strategy, on the basis of the offence of driving whilst disqualified, and included 'all options' in the report. The defence solicitor mitigated on the grounds that the client was 'a hard worker' who had a 'alcohol problem' for which he had sought help and suggested that, in view of this, the court should impose a community sentence. In the event, the client received a financial penalty.

Case Two

The second case also related to an offence of driving whilst disqualified. Following the preliminary indications of the bench, this report also strategically included 'all options', but emphasised the potential value of a probation order to:

SIR extract

'act as a reminder to him to be of good behaviour ... (and for) discussion about his offending behaviour ... (along with) help and assistance regarding eligibility to certain State Benefits now he has become self-employed'.

This was endorsed by the solicitor:

Field note extract

'I don't intend to elaborate on the report ... I urge your Worships to follow the recommendation'.

Again, a disparity occurred between both signal and recommendation, and recommendation and sentence. The case was disposed of in terms of a monetary penalty.

Even though the two preceding reports were ineffective in securing a preferred outcome, the sentence imposed was more lenient than that which was either indicated at the request stage or recommended in the report. This could have reflected disparities between benches, rather than the report writers' inability to exercise influence over the decision-making process, and illustrates the complexity of variables involved in the process.

Attempting To Exert Influence

The final case in the not followed category represented a realistic attempt to exert influence over the sentencing decision with a view to securing a preferred outcome on behalf of the client, rather than as a means of maintaining PO credibility. It concerned a pre-sentence report (PSR). Because this differs in degree, rather than kind, from a social inquiry report, it is not entirely incomparable and has, therefore, been included in the sample. But I acknowledge that, because preliminary indications of sentence are more specific in the case of PSRs, it was more difficult for report writers to relocate the offence into another sentencing band, even given the machinery, contained in PSR compilation to mitigate.

The offence concerned the exportation of heroin. Although no preliminary indication of sentence had been received, because of a breakdown in formal court relations at the request stage, when the probation officer was not called into court, the referral form indicated that:

'The defence stated it was serious (that only a custodial sentence would be appropriate)'

because of the amount involved. Nor was there any informative signals from the client, who was released from custody before the probation officer had an opportunity to confer with him. Moreover, information was not forthcoming from the prosecution who, in this case, involved Customs and Excise, as opposed to a 'local' Crown Prosecution representative, and whose relatively irregular appearance made the establishment of informal relations difficult.

In addition, all efforts by the report writer to obtain any record of previous convictions relating to the client failed, although the client admitted that he did 'have a record'. Thus, the report writer had no formal or informal 'starting point' for the report, other than information submitted by the client at interview. Conscious of the prospect of losing her credibility in the eyes of the court, she stated this in the report:

SIR extract

'I have had to rely on information supplied readily by (the client)'.

Nevertheless, given the absence of alternative signals, we can assume that proposal of 'appropriate' sentence, in this case, reflected the report writer's 'objective' opinion:

SIR extract

'I am aware that the Court considers the matter serious enough for a custodial sentence. (Client) knows that and would serve whatever sentence he is given.

However, I would argue that given all the mitigation in this case, this is a somewhat exceptional one and that a community sentence could be used. He is assessed as suitable for a Combination Order, which would mean that some Community Service was done by him whilst an opportunity to explore his personal problems could be addressed by means of a Probation Order. He is asking for counselling. A

Combination Order would seem appropriate' (PSR).

In spite of the lack of preliminary indication as to sentence in this case, the report writer had expressed the sentence proposal, in accordance with the Criminal Justice Act 1991, as being 'so serious that it warrants a custodial sentence'. Whilst this was the sentence imposed by the court, the proposal itself, unlike the preceding examples, was neither a tokenistic or tactical attempt to influence decision-making inspired by a technical link between availability and appropriateness, self-assertion, or social bias. Rather, this report represented a concerted effort by the report writer to divert the offender from incarceration. That the proposed method of disposal was not followed by sentencers in this case should not, therefore, be seen

as a 'failure'. Ironically, it reflected the contradictory elements of role and function whereby a more specific and custody-specific signal in accordance with legislative guidelines, as opposed to being transmitted directly by court relations, together with an obligation for the report writer to employ this as the starting point for the report, made the task of diversion more difficult - even though PSR'S properly contain the machinery to mitigate. In this sense, the case was atypical. But if PSRs demand more concerted effort on the part of report writers in relation to their clients, it is unlikely that this will achieve the 'desired' effect of 'diversion' through 'objectively' assisting sentencing decisions because this assistance is then diluted through the contradictory elements of role in relation to the court.

A summary of the nine cases in the sample of 'not followed' reports reveals that:

- One reflected the restriction of limited options to availability and appropriateness of sentencing.
- One represented an unsuccessful strategy in self-assertion by the report writer that resulted in the client exerting his influence over the process.
- One amounted to an unrealistic recommendation, largely based on 'positive' social indicators that were aligned with the report writer's personal bias, rather than an objective assessment of 'appropriate' sentence.
- Three amounted to tokenistic attempts to influence sentencing decisions, aimed at securing a preferred outcome in terms of maintaining professional credibility.
- Two were ineffective in the sense that the sentence imposed was less punitive than that recommended (whilst we might expect recommendation and sentence to differ, it is usually in the reverse direction).
- One report constituted a proper attempt to influence sentencing decision with the specific aim of diverting the offender from custody, but this was ineffective due to the contradictory elements of role in relation to the client and the report.

The Overall Sample

An overall view of the sample reveals that it comprised almost equal proportions of 'followed' and not followed reports. Disparity between signal and recommendation occurred in 8 of the 17 cases in the sample. Of these 8 cases, 5 signals related to a custodial sentence - 4 of these directly referring to 'considering custody' and the other one indicating 'all options'.

Of the five 'custody signal' cases, report recommendations ranged in severity from a conditional discharge to a community service order. Three of these recommendations were followed, but closer scrutiny of the individual cases revealed that it is too simplistic to assume that this 'success' can be attributed solely to the effectiveness of the report writer.

Report writers operated within complex formal and informal relations in both an organisational and systems context, whilst reports consisted of only one aspect of social information submitted to the court.

Hine et.al. (1978) separated the various types of information about defendants that sentencers would use - social information in reports, information from the police about antecedents and the circumstances of the offence, and the recommendation from the probation officer. It emerged that probation officers recommendations for custody seemed to be a very powerful (at least) ratification of sentencers preferences, since all were 'followed' in the experiment - a similar finding to that reported in Perry (1974). Hine et.al. (1978) also showed that out of the 240 sentencing decisions involved, identical numbers of offenders (24) were apparently diverted into custody by the provision of social information and a recommendation as were diverted from custody under similar conditions (cited in Roberts and Roberts, 1984, p.82)

The present overall sample contained no recommendations that a custodial sentence be imposed. Whilst custody specific signals had been forthcoming in 10 cases, almost half of these received custodial sentences - 3 direct and 1 suspended. The remainder consisted of 3 community service orders, 2 probation orders and 1 financial penalty. But it would not be

accurate to state that as many were diverted into custody as out, because not all non-custodial sentences had preliminary indication of custodial sentence (and were therefore not diverted from custody), whilst none of the cases where custody was imposed had received preliminary indications of non-custodial sentences (and, therefore, were not diverted in).

Some preliminary indications referred to sentencers' preference for a probation order as a means of disposal and, therefore, these offenders were never in any real danger of being incarcerated. Overall, there were 7 non custodial signals or no signal, compared to 10 custody signals. Thus, custody signals were received in the majority of cases, but custodial sentences formed the minority of disposals. Whilst this suggests that reports were successful in diverting offenders, 'followed' reports were not necessarily effective in the sense that sentence was the outcome of the report writers' influence. Similarly, disparities between recommendation and sentence did not necessarily either reflect a challenge to the sentencing predilections of the court (with the exception of custodial signals) or result in a more punitive sentence. In two cases in the custody signal/recommendation divergence sample that were not 'followed', for instance, the sentence imposed was lower than that recommended in the report.

Offenders Perspectives

For many offenders, whether first-time offenders or not, the court was a hostile and intimidating environment that represented the end of a long, worrying and often confusing process. Individual roles were identified and defined by offenders in relation to the perceived degree of alignment to this context and to themselves:

Interview extracts

'I thought the PO was working more with the court than my solicitor'.

'The PO is like on *their* side , the solicitor's the one who helps you'.

These observations would seem to suggest that offenders perceived the PO as something of an adversary. Whitehouse (1986) has suggested that the social work assessment process that

report writers engage in contributes to and perpetuates structural inequalities and calls for the abolition of social reports to the court. Whilst the present study confirmed observations of PO/client inequality through the reflection and reinforcement of the systems context of reports, interviews with offenders revealed that many perceived report writers as an ally in an otherwise hostile environment:

Interview extracts

'The PO is there to help you, because the judge won't help you will he?'

'I found the court appearance very intimidating. I didn't understand the procedure. The odds are stacked against you when you go to court, especially if it's for stealing money, because the magistrates are all businessmen and things like that and they don't take too kindly to somebody cheating someone out of money. The police told a pack of lies and the prosecution read things out that I was supposed to have said when I got arrested, and I had *never* said those things. The clerk of the court was a very arrogant person. I'd never even *seen* my solicitor, the first time I went into court I was standing there like a fish out of water, I didn't know *who* was supposed to be representing me because I'd only ever seen (the solicitors clerk), that's how it was all the way through. In fact, the first time they forgot about me and nobody turned up from the solicitors at all. It was a shambles. He didn't know about the case, he hadn't had time to read the file he said. I felt I had an ally in (the PO)'. (Convicted of DSS fraud).

'My solicitor done the best he could, but he was always in a rush - he didn't really *listen* to what I had to say'.

Some 82% of the offenders interviewed responded in this vein. This indicates that, from the perspective of defendants, the PO represents a positive influence in the negative shortcomings or biases of significant others involved in the administration of justice. But when offenders were satisfied with other aspects of judicial process, the PO compared less favourably:

Interview extracts

'I never liked (the PO) and he never liked me. I reckon he wanted me to go down. I'd had him before you see. At least you can change your solicitor'.

'I don't think the report made any difference really. It was my solicitor who done all the work. It was her who kept me out, not the report'.

'The PO made you feel like you should be grateful, do as your told sort of thing. She was worse than the magistrates, they were very fair really'.

The report as an event was assessed by offenders in relation to an instrumentalist evaluation of it's worth as a diversion strategy. Accordingly, most of the interviewees thought that the report was influential as an instrument of mitigation in diverting them from what they saw as the certainty of a custodial sentence:

'(The PO) said I was very easily led and that I committed offences when I'd been drinking. It helped the court to see me as a person. They can understand, probably, what you're going through from reading the report, *why* you offend'.

'I told my solicitor and the PO that I'd been listed as having 61 TICs, when it really should have been *one* TIC involving 61 items - that I'd only done it once before - that was put in the report'.

But whilst most interviewees associated the report with a favourable disposal, others saw supervision in the community as adding to their problems:

Interview extracts

'I got a probation order and it just made things worse - I had a lot on my mind at the time and I kept forgetting the appointments and then I ended up back in court for breaching the probation order'.

'It does your head in, going to probation every week. They want you to talk about your problems all the time and sometimes you don't want to talk about them because they're private, and sometimes you haven't got any problems but you feel as though you *ought* to have some'.

Before I conducted the interviews with offenders, a Senior PO predicted that those who received a community sentence would hold a favourable perspective of reports, whilst those who received a custodial sentence would be aligned to a less favourable view. The sample consisted of some offenders from each of these groups, but there was no correlation between disposal and perspective. For their part, offenders gave favourable or unfavourable reports on probation officers according to the context within which they operated and through which offenders encountered them.

Measuring Outcomes and Success

We might expect an examination of reports as an event to reflect POs ability to exert influence over the decision-making process. But the study revealed that reports as a sentencing aid said little about PO's ability or desire to exert influence over sentencing decisions in relation to their clients, and rather more about elements of role and function in relation to the report.

Sentence recommendations were the strategy employed by report writers to secure a preferred outcome in any particular case. But 'preferred outcomes' not only, or primarily, related to an 'appropriate' sentence in relation to the individual circumstances of the offence(s) or offender(s) concerned. 'Preferred outcome' in any or all of the cases in the study also related to the maintenance of PO credibility. Maintaining credibility in the eyes of the court involved an alignment with the court, not only with regards to the 'objective' sentence imposed but also in relation to the means of achieving this and, to this end, report writers employed various techniques that operated within a complex set of relations and constraints.

Although the employment by the courts of social inquiry reports has developed in response to increasingly complex sentencing policies, sentencers have no statutory obligation to either request reports or to follow the recommendations they contain.

Whilst it is recommended that a report be obtained in a variety of situations, this generally

'does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a social inquiry report' (Jarvis, 1987, p.92).

Similarly,

'no sentence is invalidated by the failure to obtain a social inquiry report' (Ibid. p.93)

Interviews with magistrates revealed that the common practice of sentencers to state in open court that they are 'not obliged to follow any recommendation submitted in the report' was a mechanism employed to safeguard their sentencing decisions against appeal, but this was also an unnecessary precaution given that even on appeal:

'the court must obtain a report *unless it is of the opinion that, in the circumstances of the case it is unnecessary to do so*' (Ibid. p.93).

As such, successful and/or effective reports were limited, in the crudest sense, by the sentencers' ultimate discretion as to their availability and employment. This link between availability and employment of reports in the sentencing process was subjective in the sense that it was applied both discriminately through selection and that this, in turn, could not be divorced from the local context in which it operated.

Research has shown that variations in sentencing occur in the context of local traditions. The study by Tarling (1979) and, more recently, Parker et.al. (1989) have illustrated the importance of local sentencing traditions very clearly:

'Perhaps the most significant finding of this study is the degree of importance attached by court officials to establishing and maintaining a consistent policy within their own

individual courts and their relative disregard for the policies of their neighbours'(Parker et.al., 1989, p. 45).

That probation officers operated within this context meant that 'knowing the bench' was an important feature of their reports. A signal that 'all options' should be considered, for instance, may have resulted in a custodial sentence because this was the recognised code expressing the *sentencers'* preference for such a disposal. The report writers' ability to challenge such preferences was limited by their capacity in their role as a servant of the court. Although

'the report writer should be vigilant about including information which may assist the sentencer in reaching a *final* view on sentencing' (National Standards for the Supervision of Offenders in the Community, 1992, p.14),

she was relatively powerless to either challenge or change sentencing predispositions because, in her role as servant of the court, she was obliged to operate within both the individual and local context of sentencers' preferences. This called into question both the role of the report as a sentencing aid and the role of the report writer in the decision-making process within their wider context.

Earlier studies, notably Hood (1962) and Young (1979), compared the characteristics of offenders sentenced similarly in different courts, and found considerable disparities which, both studies concluded, led to similar offenders being sentenced quite differently in different courts. The importance of this first factor, for the probation service, is that any attempt to influence the behaviour of sentencers must be local, and be based upon a sound knowledge of the sentencing behaviour of local courts. In this context, national trends have little significance, and even tables based on whole probation areas are limited in their value by the extent to which practice within areas may vary (Roberts and Roberts, 1984, p.81)

Two points should be made with regards the above observations. The first is that report writers attempted to influence the sentencing court and that this was not necessarily local, as offenders were referred *to* their local probation service, but not necessarily *from* their local court, given that the offence may have been committed in another area. Whilst this was bound to limit the capacity of the report writer to predict the nature of sentencing decisions, the declaration of sentencers' signals, on request referral forms, served to simultaneously minimise the probation officers' ignorance of local practices and, in reflecting the sentencing courts preferences, reinforce them.

The second, obvious, point is that both reports and local sentencing traditions represent an individualised approach, inherent to which is the potential for injustice to occur through bias. This means that:

'If one is considering modifications to court practices it is possibly this feature which is the most important one. Indeed, one could, if one wished, see the insularity and durability of court traditions as major obstacles to attaining greater consistency between courts. Any attempts to change existing procedures cannot afford to underestimate the strengths and weaknesses of these traditions' (Ibid., p.45).

At the systems level, the Criminal Justice Act (1991) goes some way to challenging these traditions through the principle that:

'The whole criminal justice system should be administered efficiently and without discrimination' (Guide to the Criminal Justice Act (1991), 1992, p.4).

The Act claims to:

'Bring into effect a new process by which a sentence of the court is decided and carried out.

This process starts with the pre-sentence report (PSR). Probation officers are the officers of the court who, as never before, statutorily have the central role throughout the whole of this process' (Ibid. p.2).

The title of Pre-sentence, as opposed to social inquiry, reports reflects a shift in sentencing policies whereby the process by which sentence is decided and executed rests on the primary principle that:

'Sentences should reflect the seriousness of the offence(s) committed' (Ibid. p.3).

The Act contains four types of disposal - discharge, financial penalty, community disposals and custodial sentences - located within three sentencing bands.

'Custody should be reserved only for the most serious offences (and) a sharper distinction should be drawn between property offences and offences against the person (whilst) community sentences should stand in their own right and should not be seen as alternatives to custody' (Ibid., p.3).

In deciding which sentencing band is appropriate, the court should assess level of seriousness, taking into account any aggravating or mitigating features relating to the offence. This obligatory reference to mitigating and aggravating features potentially awards report writers a greater opportunity to exercise their discretion in relation to the decision-making process, but this is stifled by the retention of traditional links between role and function.

Whilst the PSR differed little from its predecessor in the function of 'assisting the court in determining the most suitable method of dealing with the offender', the information 'relevant' to assessing this in accordance with the principles of the Act tends to be more offence, rather than offender, specific. This, together with the principle that community disposals were no longer defined as 'alternatives' to custody, but as sentences in their own right, represented a departure from the traditional 'welfare' model of the probation service and the perspectives of its individual officers towards a more punitive application of their role.

The Act is accompanied by rules, issued by the Secretary of State, governing the content of PSRs and the supervision of community orders, which are specified in terms of National Standards for the Supervision of Offenders in the Community (1992). In accordance with these rules:

'The sentencer is required to make the judgement on seriousness and sentence, (whereas) the report writer is required to make a provisional assessment, intended to ensure that the PSR of properly focussed and addresses only those outcomes that are broadly likely. Near the boundary between two classes of sentence, for example, between community sentences and custody, it will be appropriate for the report writer to recognise that more than one sentencing outcome may result, and to provide information relevant to both (or all) of these' (National Standards for the Supervision of Offenders in the Community, 1992, p.14).

In submitting mitigating or aggravating features in their reports writers were, theoretically, able to exert influence over the sentencing process by relocating offences into higher or lower sentencing bands. As such, the traditional role of diverting offenders from custody remained, theoretically, intact. In practice, however, this potential remained stifled by the continuing practice of awarding sentencers ultimate discretion to both request and follow reports, and the report writers' obligation to follow the signal of the sentencer at the request stage.

Although the Act states that PSRs *must* be sought before imposing certain sentences (such as custodial, probation orders or supervision orders), the claim that the PSR

'becomes a statutory requirement in many cases' (Reference Guide to the Criminal Justice Act 1991, 1992, p.2)

is contradicted in practice by the principle that:

'If the court fails to obtain a PSR before passing one of these sentences, this does not, of itself, invalidate the sentence' (Ibid. p.9).

As such, the technical link between availability and appropriateness remains, as does the sentencers'

'sole responsibility, after a finding of guilt, for imposing sentence and, therefore, for judging the seriousness of the offence' (National Standards for the Supervision of Offenders in the Community, 1992, p.13).

Again, this was further reinforced by the report writers' obligation to take the 'preliminary indication' of the sentencers' view of the seriousness of the offence(s) as the starting point for the preparation of the report.

The implementation of the 1991 Act meant, in practice, that indication of sentence was even more specific, especially since

'any court on appeal against such a sentence must obtain and consider a PSR' (Reference Guide to the Criminal Justice Act (1991), 1992, p.9).

This greater accountability of sentencers through the obligatory employment of reports as an aid to appellate review of their decisions, and the technical relationship between 'seriousness' and sentencing band, has effectively rendered the phrase 'all options' redundant. This meant in practice that report writers were doubly restrained in that they were no longer able to ensure that reports were successful through the 'indiscriminate' inclusion of a broad range of disposals because they were obliged to follow a more specific signal. That PSRs properly contained the mechanism, in principle, to relocate offences into a higher or lower sentencing band was somewhat illusionary in practice because:

'Drawing fairly on both aggravating and mitigating features in a case does not preclude the report writer from presenting facts or advice relevant to a particular sentence, *provided* the distinct role of the sentencer is respected' (National Standards for the Supervision of Offenders in the Community, HMSO, London, 1992, p.13. (original emphasis)).

The study found that it was uncommon for report writers to advocate a more punitive sentence through the inclusion of aggravating features. Even within their role as a servant of

the court, probation officers tended to hold on, in principle at least, to their traditional welfare orientations:

Field note extract

'I know some officers now who keep their reports as short as possible, with the attitude that if that's what the court wants, that's what they'll get - but I'd rather spend time talking to people - that's why I came *into* this job - even if much of what is said is no longer used in reports, I never see that time as wasted' (PO).

But local and subjective trends illustrate the requirement of adopting a qualitative approach in analysing the relationship between report recommendations and sentencing decisions, and the necessity of drawing a distinction between 'successful' and 'effective' reports.

The new Criminal Justice Act has retained the principle of individualisation associated with reports and the penal-welfare model of jurisprudence from which they emanate. That this principle is now operationalised within stricter sentencing strategies and national standards for the supervision of offenders does not necessarily, however, challenge local sentencing traditions. In relating community sentences to the sentencing framework of the Act, any model of representation of the range of sentences available

'is *not* intended to be prescriptive; if used it will in any event have to be adapted to local structures and programmes of supervision' (Ibid., p.26).

As such, changes to existing procedures are somewhat limited.

In respect to reports, the relationship between role and function reinforces traditional trends and practices, rather than challenging them because the relationship between sentencer and report writer is unchanged in principle. The sentencer is still not obliged to either request or follow reports. When reports *are* requested, the sentencers' obligation to specify which sentencing band is appropriate according to more specific criteria, and the obligation of appeal courts to consider reports, may effectively amount to greater accountability, but the

role of the report writer in following more specific signals, and *their* greater accountability through the implementation of national standards, is further undermined.

The role of the report writer contains a requirement

'that advice and information in a report is provided *impartially*' (Ibid., p.13).

But this requirement in principle is unattainable, contradicted in practice by an obligation to follow the preliminary indications of the sentencer. In meeting this obligation, the relationship between signal and recommendation also remains unchanged. It is this relationship which necessitates the distinction to be drawn between 'successful' and 'effective' reports.

Similarly, the potential to influence sentencing decisions through the inclusion of mitigating or aggravating features is not new in principle, as reports have always, officially, been an objective sentencing aid, but, like their social inquiry predecessors, pre-sentence reports are restricted in this function by the role of the report writer as a servant of the court, accountable to sentencers and their preferences - as one sentencer disclosed during interview

Interview extract

'familiarity breeds contempt - you notice report writers names and, if it's a bad report, you tend to remember - I admit there's been times when I've turned to the signature first and thought - this won't be very helpful to us'.

Against these trends it is doubtful, although a matter for research, whether the implementation of the new Criminal Justice Act will counteract localised sentencing practices or preferences.

The application of such trends holds implications for the wider administration of justice and report writers' contribution to this.

Interview extract

'What you have to remember is that the report writer may also be the person to administer a probation order and, in a way, they've got to protect their career - *they're* going to have to pick up the pieces and run with them. Magistrates are, after all, protecting the public, thinking to the public good rather than to just the individual case and *that's* where the necessary tensions exist between POs and us, and long may it continue. It wouldn't be as well if we all got into the same boat' (Mag).

Magistrates perceived these 'necessary' tensions as conducive to objectivity in that POs had an ongoing relationship with their clients and, therefore, would be reluctant to recommend a disposal that would damage that relationship. What magistrates failed to grasp was that report writers, unlike defence solicitors, had an inquisitorial, rather than adversarial, role. Whilst this role was supposedly neutral in relation to the client, it contained an alignment with the, supposedly equally neutrality, of the court. The view that report writers were 'not in the same boat' perhaps indicated that magistrates placed less importance on this relationship than report writers, whose practice often reflected their historical relationship to and allegiance with sentencers. In reality, neither roles were either neutral or distinct and, because of this, 'protecting their career' involved the prioritisation of the PO/ court relationship over the PO/client relationship and this, in turn, was significant to report writers sentence recommendations.

The potential for bias to occur through an obligation for report writers to acknowledge *sentencers'* preferences in assessing 'appropriate' disposal was further compounded, in practice, by report writers' own, equally subjective, aim of securing a preferred outcome in relation to maintaining credibility in the eyes of the court. Whilst this often led to the inclusion of a broad range of sentencing options, it also involved report writers distancing themselves from clients, sometimes with the result that particular clients were potentially excluded from disposals that involved supervision in the community. Given the traditional professional ideologies of probation officers, such a strategy amounted to a prioritisation of

interests whereby the PO, through her relationship to the court, had elevated status over the client.

But securing a preferred outcome in relation to maintaining credibility also involved imposing a version of reality that was hierarchically constructed within the context of competing court relations. Although it was uncommon for writers to include aggravating features in their reports, the inclusion of mitigating features and the application of these to securing a preferred outcome involved a court-context relationship between the report writer and the defence solicitor.

Like the PO, defence solicitors also revert to a knowledge of the bench (McConville et.al. 1994). But, whilst solicitors for the defence hold a general view of local sentencing traditions which they apply indiscriminately to their caseload, the report writer applied this in a case-specific manner, although the routine categorisation of offenders undermined the inherent principle of individualisation associated with this.

Copies of the report were usually submitted to the court, the client and the defence solicitor. Solicitors rarely disagreed with the report and employed it as the basis of mitigation. Phrases such as:

Field note extract

'I don't intend to elaborate on the report' (Defence solicitor).

were commonly employed by defence solicitors at sentencing. As one magistrate observed:

Interview extract

'A lot of defence solicitors ask you to read the report first, try to gauge whether you're willing to go along with it and *then* address you - if they think you're willing to go along with the report they will often just reiterate the report' (Mag.).

In this context, 'followed' reports might have been 'successful' because they colluded with a prevailing consensus as to disposal, rather being 'effective' in the sense that they could be attributed to the report writers' ability to exert influence over the decision-making process.

For their part,

"solicitors' discourse is a self-conscious discourse - an oral intervention. Its unspoken goal is the 'normalisation' of the defendant through a process which packages and re-presents the defendant as a coherent unity which is recognisable by the magistracy.

Normalisation is a process whereby an illegal action and the person who commits that action are re-presented as 'typical'" (Worrall, A., 1991, p.21).

But when consensus broke down and solicitors challenged report recommendations, this was not a reflection that the recommendation itself challenged a prevailing ideology pertaining to the defendant. Rather, some recommendations abandoned the client in order to maintain PO credibility and 'unsuccessful' reports reflected a challenge to *this* through the assertion of role relating to other court personnel and the marginalised position of POs in the context of court relations. In any event, that the report influenced the solicitor holds its own implications for the administration of justice through the defence of criminal cases, given that it was the relationship to sentencers that influenced the report.

Interviews with magistrates revealed that, for their part, the bench often placed more importance on reports in relation to sentencing decisions than they did on speeches of mitigation. This might have been because report writers were perceived as being better equipped at 'normalisation', given that the role of transforming the offender has been traditionally located in the social, as opposed to legal, sphere. Alternatively, magistrates may have placed greater credence on reports than speeches of mitigation because of the 'integral feedback loop' which served to reflect their own perspectives and echo their own voices. But magistrates also indicated that they assessed speeches of mitigation in relation to solicitors' 'vested interests':

Interview extract

'Solicitors are there to present the defendant in the right light - it's a different relationship and must be taken with a pinch of salt like everything else. You listen to defence solicitors and the phrase that comes to mind is, 'well they *would* say that', because that's what they're picking up legal aid for' (Magistrate).

The structural location of report writers has reduced this 'bias' to some degree but has not entirely eliminated it:

Interview extract

"We learn about limited resources, then we have a report from the community service people saying 'send us more people and we can do more work with pensioners and the disabled and so forth'. And you think, 'just a minute, are we actually here to make a scheme work well by sending more people on it?' To a certain extent, they've got to justify their existence by having people to work *with*. Then, the next thing you know, they're under-staffed and their resources are stretched and they don't want as many people' (Magistrate).

But, in their concerns to secure an outcome that would not damage their own credibility, report writers often failed to capitalise on their status in a positive way. Through their adoption of a somewhat blinkered and negative approach to report compilation that was informed by sentencers' indication of 'appropriate' sentence, reports were also criticised by sentencers for their failure to canvass some of the options that *were* available:

Interview extract

'I am quite surprised how very rarely the report suggests things that I know exist. We hear about violent offenders groups, but I have never, ever seen that in a report. We know about, and I have visited, the day centres and was very, very impressed with the work going on there - I have only once ever seen day centre recommended. I don't

know what it is about our probation officers, either they don't like it or they don't think it's effective, but they do *not* recommend day centres. I am surprised how seldom they draw to our attention possibilities like that. If they think we all know all about them I'm afraid they're wrong, because there are 126 magistrates here and only 16 of those are on the probation liaison committee (where various schemes are usually canvassed), but the other thing they should bear in mind is that you cannot hold all these things in your head and reports are an ideal opportunity to remind magistrates of what *is* available' (Mag).

Chapter Eight

Conclusions

The study aimed to examine how, in practice, probation reports to the court in criminal cases were constituted and constructed. The study focussed on the report as a process and event, rather than viewing processes and events *through* the report in a way that has been characteristic of other studies and that has tended to artificially decontextualise the report from its operational moorings.

Probation reports function as a sentencing aid. The role of the report writer in compiling reports is to make an individual assessment of the case, based on professional judgment, through a process of social inquiry that aims and claims to contextualise offence and offender with a view to assisting the court in determining the most 'appropriate' sentence.

Contrary to official accounts, but consistent with other research in this area, the findings of the study indicate that probation reports to the court are neither an objective sentencing aid to what options are available nor a comprehensive analysis of what is 'appropriate'. Rather, both their objective effectiveness as a sentencing aid and their comprehensiveness is undermined on the one hand by selective procedures and subjective preferences of sentencers and, on the other, by the imposition of these onto, and implementation in, probation practice.

These processes begin in court, at the report request stage, when offenders are selected for assessment as to appropriate sentence or 'treatment'. Within the court context probation practice is informed and influenced by formal and informal relations. The role of the probation officer as report writer contains obligations to conform with and fulfil particular criteria relating to the function of the report as a sentencing aid. This includes an obligation for report writers to acknowledge preliminary indications given by sentencers as to likely disposal. These signals from

the bench are transmitted, via referral forms, to the organisational level of probation practice.

Because referral procedures properly form the starting point of the written report, probation officers are dependant upon informal sources to obtain preliminary details of the offence and offender when formal relations break down. Thus the systems context is imposed from the outset onto the process of social inquiry, that properly begins with the allocation of cases to report writers at the organisational level.

Allocation of cases at the organisational level of probation practice, although it varies in relation to management discretion, is largely instrumental as opposed to any matching of cases to officer preferences or expertise. This sometimes leads to the reproduction of anomalies in relation to offenders and, as a safeguard against this and other discriminatory practices, monitoring procedures are largely inadequate and ineffective. As such, offenders are disadvantaged through the process of report compilation before any interview with the allocated report writer has even taken place.

Officer/client interaction properly begins at the interview stage of report compilation. Most interviews take place in an environmental setting that is not conducive to communication or the development of a positive working relationship between probation officers and their clients.

As a social act, the interview contains inherent power differentials that are further compounded by the enforced relationship between report writers and their subjects.

Differential status between probation officers and their clients is reflected in strategies of control and resistance. These involve various techniques whereby the probation officer invokes the wider authority of the court and her role as an officer of the court to regulate client behaviour. In response, clients engage in their own strategies of control and resistance, although attempts by them to contextualise their situation or to

institute their own claims for particular 'treatment' are generally regarded by probation officers as unhelpful, unrealistic or obtrusive. In particular, clients' refusal to accept the findings of the court is problematic to report writers and gives rise to interrelated conflicts relating to credibility, categorisation and role.

Credibility, rather than truth, is central to both the administration of justice and probation practice. For both offenders and probation officers credibility is crucial in the systems context. Because of the recourse of sentencers to complaint when reports contain inaccurate information, PO credibility is dependant, to various degrees, upon client credibility. This means that PO/client relations are founded on mistrust and both engage in strategies aimed at maintaining or maximising their credibility status with a view to their own self-preservation. To this end, some clients admit that they lie about their circumstances at the report interview in the belief that, in so doing, they will portray a favourable image of themselves in the report and through its function as a sentencing aid will, thus, avoid imprisonment. But distancing qualifies a tendency among report writers to tell their clients that the report is an opportunity for them to portray their own version of events to the court.

In reality, the report is the product of interpretation and reconstruction and amounts to re-presentation as opposed to representation. Client consciousness of this qualifies, to some extent, assertions that the rules of justice are not freely agreed upon by all participants in the process of its administration. But an appreciation of the 'rules' does not constitute equal participation in the 'game' and, as such, game theory proves an inadequate theoretical foundation from which to analyse these events. So, too, does the 'perceiving-acting loop' hypothesis which, in focussing on the interactive relationship between report writer and client, fails to adequately recognise the existence and influence of a third party - the court.

A symbolic interactionist definition of the interview dynamic is conducive to probation practice in that it acknowledges the interview as a social act, but a review of

past and present situations with the aim of self-assessment and definition that this perspective incorporates applies as much to the PO/sentencer relationship as to the PO/client relationship.

What is clear from the study and inherent to the inadequacies of these theoretical persuasions is that the PO/client relationship and the interview dynamic can only be understood in terms of the wider systems context in which they operate.

For report writers, credibility is obtained and ultimately measured through court relations. The historical legacy of a quasi-legal status assigns probation personnel to a relatively inferior and marginal position within the competitive relations of an adversarial setting. In order to maintain credibility and manage conflict, probation court personnel adopt strategies of prioritisation that not only involve attempts to filter out clients, but that also result in selected clients becoming incidental, rather than central, to the probation report - which is less concerned with the offenders' version of events than with producing an image that is consistent with the value system of the court.

In practice, this involves the categorisation of clients according to 'typologies' as well as according to a classification relating to offences. The image of the offender that materialises is often a decontextualised and negative one, although it is sometimes constructed for what the probation officer sees as positive and strategic reasons. For their part, offenders view the process as intrusive and the information as irrelevant. In that it decontextualises offenders and re-constructs their circumstances in ways meaningful to the systems context but not to themselves, contemporary probation practice conforms to a professional culture that is historically rooted.

The requirement of probation officers to conduct enquiries in relation to offenders and submit the findings to the court with a view to assisting the court in determining the most suitable method of disposal in a case embodies the traditional role of the probation officer as an officer of the court. This role has evolved in relation to a

humanitarian desire, on one hand, and a perceived economic necessity, on the other, to present alternatives to custody. In supervising 'new', 'progressive' community disposals probation officers came to be seen, and saw themselves, as the promoters of a more humane and caring society. As a sentencing aid, reports to the court have represented the vehicle through which such disposals have been secured and, thus, have been part of the administration of justice. But whilst probation as a sentencing strategy can be directly linked to penal reform, both the ideological and instrumental dimensions of probation practice are linked to philanthropy.

From the theoretical foundation of individual pathology, nineteenth century discourse emphasised the perceived links between poverty and delinquency through a 'cycle of deprivation'. In effectively reducing the political to the personal such an approach was conducive to political ideals of self-help. In accordance with the 'disease model' that this espoused, 'diagnosis' and 'treatment' were applied, in relation to the poor, through the medium of a casework approach, administered through the COS, that involved the surveillance and 'normalisation' of one class of individuals by another. The twentieth century witnessed a shift in so far as these practices were harnessed by the State, but the principle of 'pathology' and an associated individual approach to social problems remained.

In relation to contemporary probation practice, the hierarchical construction of reality emanating from this means that reports are individualised, rather than individual, constructs that reflect and perpetuate broader discriminatory practices. This holds implications for the immediate and wider administration of justice.

Deference to the court is imposed through the imposition of function on role at the systems level. But the subjective application of this at the organisational and interactive level of probation practice is also part of the professional culture and value-systems of report writers. This hold implications for the role of the report writer

in relation to both the client, and the decision making process and the function of the report as a sentencing aid in both the local and wider judicial areas.

Whilst the categorisation of clients according to typologies, together with the classification of offences, means that reports are individualised, rather than individual, constructs that are selective and subjective rather than objective or just, the ability of report writers to exercise professional judgement is also more apparent than real.

Formal criteria relating to both the content and format of reports inhibits professional judgement and creates a problematic relationship between report writers and offenders. Because interviews are conducted according to these requirements, that are not necessarily consistent with the requirements of either report writers or offenders, these obligations inhibit the development of a positive working relationship between report writers and their clients. The latter often find the process itself a negative experience that adds to feelings of bewilderment and degradation associated with the court appearance.

But these power differentials, evident at the level of inquiry, that give rise to interactive tensions are partly subsumed beneath agendas relating to credibility in the court context.

Although employment by the courts of probation reports has evolved in relation to increasingly complex sentencing strategies, for their part sentencers have no obligation to either request reports or to follow the recommendations they contain. This link between availability and employment of reports in the sentencing process is selective, in the sense that it is applied discriminately through a process that cannot be divorced from the localised context, and subjective in that report writers are obliged to follow the signals of the local bench. Thus, professional judgement is, in the crudest sense, subject to the discretion of sentencers to request reports.

As an aid to decision making in the process of report compilation, probation officers employ predictive devices. The notion that scientific and objective principles can be applied to predict suitability for treatment can be historically attributed to the charity organisation society, but the inherent weaknesses of these devices are overshadowed in contemporary probation practice by their lack of employment in the courts and an associated lack of value to report writers.

As an intermediary between the court and the client the report writer is concerned not only (and with how) to secure a preferred outcome for her client, but also with how to maintain and/or maximize her own credibility in the eyes of the court. Securing a preferred outcome in terms of maintaining credibility involves imposing a version of reality, that is hierarchically constructed, within the context of competing court relations. Although the inferior status of probation officers to sentencers is further compounded by their more general marginal status in a setting where legal, rather than welfare, discourse and its associated actors have elevated status the report itself and the recommendation as to appropriate sentence is largely the product of report writers knowing the bench and being concerned to give them what they require.

At the interactive and organisational levels of probation practice this means that 'relevant' data is interpreted and recorded in ways that conform to the systems context. Thus, the report itself is neither the contextualisation of the offence and the offender nor merely, or even, the construction of the offender - who became incidental, rather than central, to it. Rather, it reflects the triangular nature of the process that informs it and the power relationships that emanate from this process. It is this process itself that inhibits the extent to which either the writer or the subject of the report are able to actively contribute to the final product or, consequently, to the final event.

As an event, the findings of the study do not support the evidence of earlier studies that the overwhelming majority of reports are followed. Quantitative studies have shown a positive association between recommendation and sentence.

Attempts to distinguish effective from successful reports in this study were confounded by the problems associated with measuring both outcomes and success within a complex setting. Outcomes themselves are particularly difficult to either determine or measure because of the complex setting in which they occur. These complexities require that reports to the court be studied via a qualitative approach. In adopting such an approach I have sought to contribute to our understanding and knowledge of the process and event of social inquiry.

Such an approach is theory generating, as opposed to theory testing, and I have suggested that the process by which probation reports to the magistrates court were constituted and constructed needs to address the imposition of the function of the report as a sentencing aid onto the role of the report writer as an officer of the court and what this means, in practice, to the officer client relationship.

The concepts and application of role and function are not neutral, but are located within a broader context. Reports to the court have evolved in relation to penal reform and sentencing policies that required the courts to have knowledge of the offender as an individual in order to administer the 'appropriate' sentence. Changes in sentencing strategies have been historically located within a 'penal-welfare' model.

Foucault (1979) suggested that the foundations for modern penality were laid down during the Victorian era, when political and economic changes called for new technologies of punishment. Reflecting the development of capitalism, it became widely accepted that the prison, as opposed to the 'punitive city' could contain and control the criminal classes. Through the formation of reports and records, prison became an 'apparatus of knowledge' that served to produce 'reality'. Foucault predicted that, with the growth of other mechanisms and disciplinary networks, the prison would become redundant and disappear from the social landscape. Although similar predictions were made by reformers in relation to the development of a probation system, this has never been realised.

Garland (1985) suggested that, whilst Victorian penalty had reflected an image of the Liberal State, modern penalty evolved in the image of the welfare state. This transition amounted to a move from individualism to individualisation and was characterised by an expansion and diversification of sanctions accompanied by the creation of a number of new agencies. An essential part of 'penal-welfare' was the process of inquiry into the background and nature of the offender with a view to his reformation.

The adoption by probation officers of the ideological and instrumental dimensions of the Charity Organisation Society was, in part, a strategy aimed at securing the professional status enjoyed by social workers, but probation officers differed from their welfare counterparts through a relationship to the State through their clients. Whilst this structural relationship has been analysed in terms of punishment and welfare, its implementation in probation practice gave rise to theoretical debates revolving around a care-control model.

Although probation as a disposal has been located at the 'soft' side of sentencing strategies, the inherent tensions associated with the shared history, aims and ideologies of both punishment and welfare proved problematic in practice.

In accordance with the basic premise of Foucault (1979) some analyses have proposed that 'alternatives' to imprisonment are merely 'supplements' amounting to an extension of discipline (Cohen, 1985; Vass, 1990). This tended to invalidate claims by probation officers that their supervision of community disposals amounted to a humanitarian measure. Others have argued that, in emphasising the similarities between probation practice and social work, the care-control debate underplayed probation's connection to the legal system, that actively determined the work and consumers of the probation service, and that this should be properly located within a theory of the State (Walker and Beaumont, 1981).

Recent shifts in penal-welfare sentencing philosophies have resulted in a theoretical relocation of probation as a disposal towards the control arena. This might be analysed as a coercive tilt resulting from a crisis in hegemony within a political climate where 'law and order' has been the flagship of party politics. Whilst this relationship to the State is played out in practice in terms of care-control in relation to supervisory disposals, role-function provides an alternative analytical model in relation to reports.

Whilst a care-control model, or its variants, might offer a theoretical foundation from which to analyse the structural location of the probation service and/or the implementation of probation practice in relation to supervisory disposals, it is difficult to apply such a model to the relationship between report writers and the court.

Probation practice has evolved in relation to the requirements of the systems context of criminal justice. Within this context, the historical relationship between sentencer and report writer was akin to that embodied between employer and employee in industrial relations. Although State intervention was accompanied by a move from fee attracting to salaried probation officers, this severance of economic relations between sentencers and report writers has not eroded the ideological commitment or statutory obligations between the court and its servants - rather, these have been transmitted to and are consistent with contemporary probation practice so that the systems context is imposed upon and transmitted within the organisational level. This holds its own implications for the administration of justice.

'Justice' pertains to a neutral and objective truth. Rather than being neutral or objective, reports have historically been the product of competing paradigms, hierarchically constructed, that have contributed to, reflected and reinforced a version of reality. The judicial process of which reports are a part is more concerned with credibility than truth. In maintaining its credibility, probation practice perpetuated a system of potential injustice through the obligatory acceptance and implementation of

localised and biased preferences that were imposed upon both reports and their subjects.

Whilst the extent to which either report writer or offender were able to contribute to the final document was questionable, the imposition of function on role and/or the influence of role to function was difficult to disentangle.

The care-control debate, and its equivalents, make a useful contribution to analyses of the supervision of offenders by probation officers but, in relation to reports as probation practice and as sentencing aids this equation is imbalanced by the relationship between report writers, as servants of the court, and the sentencers they serve. Within this triangular relationship, the question is not simply whether probation officers exercise care or control, or care as control but, rather, the extent to which any party in this relationship is able to actively exercise any degree of authority or control, and what factors facilitate or impede this.

Although different areas of probation practice are not mutually exclusive and reports do contain elements of care and control, a care-control model does not adequately explain or acknowledge the relationship between report writers and sentencers or the ways that, through this relationship, the function of reports as a sentencing aid is imposed upon the role of the report writer as officer of the court, transmitted to the organisational level and informs probation practice at the interactive level. Thus, rather than the care-control model that has been applied to other areas of probation practice, the ways in which probation reports to the court in criminal cases are constituted and constructed might be better understood in terms of an analytical model of role-function.

APPENDIX A

Document 1: Letter to Area Chief Probation Officer requesting access

June 18, 1991

Dear Mr. X,

I am a sociology graduate, now attached to the Law School at the University of Warwick. I am currently conducting an ESRC-funded research project, for the purpose of presenting a thesis, that is concerned with the work of the Probation Service and incorporates a particular interest in relation to Social Inquiry Reports in criminal cases.

As part of this project, I would very much like to spend time with Probation Officers, with a view to understanding the kinds of problems and solutions they encounter as a result of their relations with both clients and the courts.

In practice, with the consent of the Probation Service, I envisage spending time with officers and learning from them the legal and administrative controls under which they operate and the ways in which officers generally view their own role.

I should emphasise that any individuals and/or organisations involved in the research will, of course, be given every guarantee of confidentiality and anonymity so that no individual will be identified or identifiable as a result of any report that I prepare.

It would be helpful, at this stage, if I were able to give a general idea of timetable without having to be precise as to the amount of time I would need to spend overall in the field: ideally, I would want to spend up to fifteen months with the Probation Service, but it may be beneficial to rotate between different officers and, perhaps, different probation areas.

I have had extensive experience of conducting research in a similar context to the proposed research project, having spent two years working with criminal defence lawyers. As a result, I have a working knowledge of criminal proceedings and am sensitive to the special difficulties confronting Probation Officers and their charges. I am also conscious of the need to minimise any disruption the presence of an outsider can create and would take all steps necessary to ensure that my presence did not interfere in any way with working relationships.

I would be happy to discuss my project with you and would be very grateful for an early reply, as I would like to begin fieldwork in the near future.

Document 2: Initial Response From Probation Service

July 4, 1991

Dear Ms Pavlovic,

Thank you for your letter of 18th. regarding your research. I think that we may be able to assist you with your research but would need to discuss your proposals in more detail. I would like to suggest a meeting with myself and (the Senior Probation Officer in a division) with responsibility for the court. We will want to discuss your proposals in more detail and will also be able to indicate areas of particular interest to ourselves.

I am inviting you to a meeting on 11th July at 2pm at the (area) Probation Service Headquarters.

Please contact me as soon as possible to indicate whether you are able to attend. I look forward to meeting you.

(signed: Research and Information Manager).

Document 3: Outline of Proposed Research for Distribution Within Probation Service (as requested by the research and information manager)

I am a sociology graduate, now attached to the Law School at the University of Warwick. I am currently conducting an ESRC-funded research project, for the purpose of presenting a thesis, that is concerned with the work of the Probation Service and incorporates a particular interest in relation to social inquiry reports in criminal cases. Following a discussion with (research and information manager) and (senior probation officer), I propose to incorporate the following areas into the study:

PO's perceptions - the main focus of the study will concentrate on PO's perceptions in the preparation of SIR's and the problems and solutions they encounter in relation to the courts, clients and other agencies.

The Content of SIR's - in relation to issues such as race and gender

The Process of SIR Compilation - both in terms of the number of interviews conducted with clients and any qualitative divergencies between official and practice accounts

Gatekeeping Processes - and administrative restraints - i.e. Tariff/ROC score issues

SIR's as an event - the reception of SIR's by the courts and the perceptions of personnel

Client's Perceptions of the process.

I will adopt a qualitative, participatory approach to the fieldwork, the nature of the research being such that it will develop very much in relation to what I am able to learn from PO's themselves.

Timetable

It has been provisionally agreed that the research will commence on 9 September, 1991 and will continue for a period of 12-15 months. During this time, I will:

attend interviews between probation officers and their clients; interview clients and court personnel.

As the new Criminal Justice Act becomes effective during the research period, I will also acknowledge any legislative changes which result, although this will not be the main focus of the study.

No individual or organisation will be identified or identifiable as a result of the study, guarantees of confidentiality and anonymity being extended to all who participate - PO's, court personnel and clients.

On completion of the study, I will submit a report of my findings to the probation service and would also be willing to present seminars to interested probation officers.

Initially, the research will be based in (area) but may be extended to other areas during the course of the study.

(Access was denied at this stage and, following further negotiations between my supervisor and the research and information manager, it was requested that I submit a revised research proposal to be submitted to another probation area).

Document 4: Access Denied

August 21, 1991

Dear Anita,

Unfortunately, I am writing to inform you that at the (area) Divisional Management team meeting on 21 August, it was decided not to participate in your research project. I supported them in their decision which was made for valid reasons. This means that I am unable to give you permission or access to conduct your research in (the region). The points raised will, I think, apply equally in other divisions, so at this point I do not feel it would be useful to suggest we look at other courts (in the region). This must of course be disappointing for you, and all I can suggest is that you approach another Probation Service.

The concerns raised regarding the research are listed below, as this may help you in the design of the research and your applications for access elsewhere.

There was general concern that in a period when officers are very busy, having undergone recent structural change and having to prepare for legislative change it was important that research should have clear benefits to the organisation.

It is not clear what benefit the research would be to ourselves particularly since the new legislation will result in considerable change in the report writing process. The management team felt that officers were currently struggling to meet all requests for Social Inquiry Reports and the research would create additional responsibilities. It was also felt that the participating observation methodology is time consuming and intrusive and might create unnecessary anxiety for staff and clients.

Finally, there was concern, which I share, that the research proposal was very brief and gives little details regarding the scale of the inquiry, for example the number of interviews. I certainly feel that for a piece of research leading to a Phd. D. I would expect a more detailed research proposal.

I have outlined the reasons as it may help you in your future negotiations. I appreciate that some issues you may disagree with, but outline them here for information.

I am sorry the (regional Probation Service is unable to assist you in this instance.

(Signed; Research and Information Manager).

(My supervisor successfully re-negotiated access with this gatekeeper by telephone and a revised research proposal was submitted to another Probation service in the same region; see document 5).

Document 5: Second Formal Application For Access - Research Proposal

September 18, 1991

Dear (Research and Information Manager),

Following our meeting on 11 July 1991, and discussions between yourself and (my supervisor), please find enclosed an outline of the proposed research for distribution at your next meeting in the (area). Please note that the research proposal has been modified to take account of your suggestions.

I thank you again for your time in this matter, and look forward to meeting you in the near future.

Introduction

I am a sociology graduate, now attached to the Law School at the University of Warwick. I am currently conducting a research project, for the purpose of presenting a thesis, that is concerned with the work of the Probation Service and incorporates a particular interest in relation to Social Inquiry Reports in criminal cases. The project is supported by the Economic and Social Research Council, a government body which, in supporting all research in universities, is structured to encourage locally-based projects.

Following discussions with (research and information manager) for the (area), it is anticipated that the following areas would be incorporated into the study:

Research Proposal

Probation Officers Perceptions - the main focus of the study will concentrate on probation officers perceptions in their preparation of reports and the problems and solutions they encounter in relation to the courts, clients and other agencies.

The Process of Social Inquiry Report Compilation - both in terms of the number of interviews conducted and any qualitative divergencies which may occur between official and practice accounts.

I would be particularly interested here in discovering from probation officers the operational difficulties they encounter in seeking to implement general rules, directives and policies and adapt them to the needs of the individual case.

Social Inquiry Reports as an Event - the reception of social inquiry reports by the courts and the perceptions of court personnel.

The Content of Social Inquiry Reports - in relation to factors such as gender or race.

I would be interested in identifying and describing any special difficulties generated for probation officers by gender or race issues encountered in the process of compiling social inquiry reports.

Gatekeeping Processes and Administrative Restraints - such as tariff/risk of custody scores.

I would be concerned to understand how administrative regulations and score-systems are compatible with the discretionary judgment and professional expertise of probation officers.

Finally, client's perceptions of the process and purpose of social inquiry reports.

Methodology

The aim of the study is to present a contextualised account of social inquiry reports, as opposed to a statistical analysis of documentary evidence. With this in mind I would adopt a participatory approach to the fieldwork, the exact nature of the research being such that it will develop very much in relation to what I am able to learn from probation officers themselves. Such an approach offers clear benefits, both in relation to the data it generates and to the participants of the study.

In comparison with quantitative methods, participant observation produces data within the context in which it occurs and, as such, acknowledges the complexities of events, rather than presenting an oversimplified and isolated account. In practice, this will place fewer demands upon officers themselves who, rather than having to reserve time and resources to take part in lengthy interviews or fill in questionnaires, would merely be expected to conduct their work

in the usual manner. Thus, I would demand little of probation officers and ancillary staff other than that I be allowed to accompany them during the course of their work and, as such, learn from them what their role entails in relation to social inquiry reports. I do realise, however, that this in itself places demands upon the service and its individual officers, however minimal, and would like to offer some assurances at this stage.

I have had extensive experience of conducting research in a similar context to the proposed project, having spent two years working with criminal defence lawyers. As a result, I have a working knowledge of criminal proceedings and am sensitive to the special difficulties confronting probation officers and their charges. I am also conscious of the need to minimize any disruption the presence of an outsider can create and would take all steps necessary, placing myself very much in your hands, to ensure that my presence did not interfere in any way with working relationships. In addition, I am aware of current structural and legislative changes affecting the probation service and its work and feel that, in acknowledging but not focusing solely on these changes, the research may prove beneficial in highlighting the changing role of the service and what this mean to the work of individual officers.

On completion of the study, I will submit a report of all findings to the Probation Service and would also be willing to present seminars to interested probation officers.

No individual or organisation will be identified or identifiable as a result of the research, guarantees of confidentiality and anonymity being extended to all who participate. It is proposed that, in practice, the fieldwork will consist of the following:

- I will attend courts and, wherever possible, follow through individual cases;
- Attend interviews between probation officers and clients and examine reports which result;
- Interview clients and court personnel in relation to their perception of social inquiry reports;
- Provide feedback to the probation service, by way of written or verbal accounts on completion of the study.

It is envisaged that somewhere in the region of 40-60 cases will form the basis of the study, although the exact number will be determined during the course of the fieldwork itself, in consultation with members of the probation service, and would depend in part on the additional workload this places on staff. I feel that this quantity is necessary if I am to present an account which will acknowledge a generality of events within the complexities of their organisational context, rather than merely presenting what may otherwise be interpreted as isolated or atypical incidences.

I would like to thank you for your anticipated co-operation in this venture and stress at this point that the areas mentioned above are intended, for your convenience, to represent an outline of the proposed research. Should you require, I would be happy to prepare a more detailed proposal, or attend a meeting to discuss the research.

(The above proposal was finally accepted by the Probation Service, following further meetings with the probation officer concerned to secure access. However, between submitting this proposal and access being granted, I approached another probation area:)

Document 6

September 17, 1991

Dear (Information Manager),

I am a sociology graduate, now attached to the Law School at the University of Warwick. I am currently conducting an ESRC research project, for the purpose of presenting a thesis, that is concerned with the work of the Probation Service and incorporates a particular interest in relation to social inquiry reports in criminal cases.

As part of this project I would very much like to spend time with probation officers, with a view to understanding the kinds of problems and solutions they encounter as a result of their relation with both clients and the courts.

In practice, with the consent of the Probation Service, I envisage spending time with probation officers and learning from them the legal and administrative controls under which they operate and the ways in which officers generally view their own role.

I should emphasize that any individuals and/or organisations involved in the research will, of course, be given every guarantee of confidentiality and anonymity so that no individual will be identified or identifiable as a result of any report that I prepare.

It would be helpful, at this stage, if I were able to give a general idea of timetable without having to be precise as to the amount of time I would need to spend overall in the field: ideally, I would want to spend up to fifteen months with the probation service, but it may be beneficial to rotate between different officers and, perhaps, different probation areas.

I have had extensive experience of conducting research in a similar context to the proposed project, having spent two years working with criminal defence lawyers. As a result, I have a working knowledge of criminal proceedings and am sensitive to the special difficulties confronting probation officers and their charges. I am also conscious of the need to minimize any disruption the presence of an outsider can create and would take all steps necessary to ensure that my presence did not interfere in any way with working relationships.

I would be happy to discuss my project with you and would be very grateful for an early reply, as I would like to begin fieldwork in the near future.

(Having received no reply from the above by the beginning of October, I negotiated access further by telephone and, in response, received the following letter:)

Document 7

October 9, 1991

Dear Ms. Pavlovic,

As we discussed on the telephone yesterday, if you would like us to consider your proposal further I should be grateful if you would complete the attached form and return this to me with any additional information you think would be helpful.

As I mentioned, I cannot guarantee that we will be able to meet your request, but you might like to know that our criteria for assessment will include: the extent to which research proposals fit with our own current priorities; any direct benefits which might accrue to the Service; and costs (staff time etc,) which might be involved.

If you need further information or clarification, please feel free to telephone.

(I contacted this gatekeeper again, for 'further information and clarification' which might assist my request for access, and was told that 'current priorities' focused upon, "local initiatives to extend information relating to social inquiry reports, and feedback/analysis in relation to the background and offending behaviour of clients; the new Criminal Justice Act - the shift from social inquiry to pre-sentence reports and the responsibilities of probation officers."

Taking this guidance into account, I submitted the following research proposal in accordance with the form I had received:)

Document 8: Revised Research Proposal

October 17, 1991

Dear (Information Manager),

Following recent negotiations between us, please find enclosed my request for support in undertaking research with the (area) Probation Service as outlined in the questionnaire you kindly forwarded to me.

I would like to thank you for your time, attention and anticipated co-operation in this matter and look forward to hearing from you again in the near future.

Request for Support in Undertaking Research/Collect Information From Probation Service(s)

Name of Researcher/Student Undertaking Study/Research:

Anita Pavlovic

(Address)

Is the study part of or for the purposes of an education qualification - if so, please give details?

I am a sociology graduate, now attached to the Law School at the University of Warwick. I am currently conducting a research project, for the purpose of presenting a doctoral thesis, that is concerned with the work of the Probation Service and incorporates a particular interest in relation to social inquiry and pre-sentence reports in criminal cases.

The research is being conducted by me, under the auspices of the Law School and the Legal Research Institute.

Proposed Title of Study/Research

The study will be entitled: 'The Work of Probation Officers in the Compilation of Social Inquiry and Pre-Sentence Reports'.

Aims and Objectives of Study/Research

The aim of the study is to present a contextualised account of social inquiry and pre-sentence reports, as opposed to a statistical analysis of documentary evidence. To this end, the exact nature of the research is such that it will develop very much in relation to what I am able to learn from Probation Officers themselves, but it is anticipated that the following areas will be incorporated into the study:

Probation Officers' Perceptions - the main focus of the study will concentrate on probation officers' perceptions in the preparation of reports; the problems they encounter in relation to the courts, clients and other agencies and the solutions they propose.

The Process of Social Inquiry and Pre-Sentence Report Compilation - both in terms of the number of interviews conducted and any qualitative divergencies which may occur between official and practice accounts.

I would be particularly interested here in discovering from probation officers the operational difficulties they encounter in seeking to implement general rules, directives and policies and adapting them to the needs of the individual case.

Social Inquiry and Pre-Sentence Reports as an Event - the reception of social inquiry and pre-sentence reports by the courts and the perceptions of court personnel.

The Content of Social Inquiry and Pre-Sentence Reports - in relation to factors such as the offenders background and history; anticipated response of clients to the options available and the probation officer's own assessment of the case.

Gatekeeping Processes and Administrative Restraints - such as tariff and risk of custody sources. I would be concerned to understand how administrative regulations and score systems are compatible with the discretionary judgement and professional expertise of probation officers.

Finally, **Clients Perceptions** -of the process and purpose of social inquiry and pre-sentence reports.

Research Methods

I would adopt a participatory approach to the fieldwork, utilising direct observational techniques. In comparison with quantitative methods, observation produces data within the context in which it occurs and, as such, acknowledges the complexities of events rather than presenting an oversimplified or isolated account. Direct observation would be complimented by some interviewing (in relation to clients and court personnel) and documentary analysis (in relation to reports themselves).

What Specific Requirement/Element of the above is being requested of the Probation Service?

A qualitative approach offers clear benefits, both in terms of the data it generates and to the participants of the study. In practice, few demands are placed upon officers themselves who, rather than having to reserve time to take part in lengthy interviews or complete questionnaires, would merely be expected to conduct their work in the usual manner. Thus, I would request little of officers and ancillary staff, other than that I be allowed to accompany them during the course of their work and, in doing so, learn from them what their role entails in relation to social inquiry and pre-sentence reports. I do realise, however, that my presence in itself places demands upon the Service and its individual officers and would, therefore, like to offer some assurances at this stage:

I have had extensive experience of conducting research in a similar context to the proposed project, having spent two years working with criminal defence lawyers. As a result, I have a

working knowledge of criminal proceedings and am sensitive to the special difficulties confronting probation officers and their charges. I am also conscious of the need to minimise any disruption the presence of an outsider can create and would take all steps necessary, placing myself entirely in your hands, to ensure that my presence did not interfere in any way with working relationships.

How Many and Which Probation Service(s) is it Intended Would be Subject to this Research?

As I am restricted by both time and resources, it is envisaged that the research will involve two local areas, to be determined as it progresses. I'm sorry I am unable to be more specific at this stage - my timetable itself is very flexible and subject to access.

What Sources of Sponsorship/Funding is there in Relation to this Study/Research?

The project is supported by the Economic and Social Research Council (ESRC), a government body which, in supporting all research in universities, is structured to encourage locally-based projects. The benefits of this form of sponsorship lie in its flexibility. Rather than laying out specific directives, the ESRC adopts an open approach to the projects it supports, leaving the form and content of the research very much to the discretion of the student. As such, I am able to develop the project as it progresses and would like to stress at this point that the areas mentioned above are intended, for your convenience, to represent an outline of the proposed research.

Should you require, I would be happy to prepare a more detailed or, indeed, modified proposal, whereby any mutual interests may be dovetailed. I am, for instance, aware of current structural and legislative changes affecting the work of the Probation Service and its individual officers. My intentions to acknowledge, but not focus solely upon, these changes; if, however, you feel the service would benefit from a stronger emphasis upon these issues I would be happy to accommodate your own current priorities.

As the proposed research aims to examine the work of the Probation Service very much from the perspective of its officers, it follows that your own priorities are of interest to me and, therefore, I would be happy to incorporate them into the general field of study. In doing so, I am sure that the research will prove beneficial in highlighting the changing role of the Probation Service and what this means to individual officers and other participants of the study.

Forms of Information Gathering/Data Collection to be Used

It is proposed that, in practice, fieldwork will consist of the following:

I will attend courts and, wherever possible, follow through individual cases;

Observe interviews between probation officers and clients;

Examine the social inquiry and pre-sentence reports which result from the above;

Interview clients and court personnel in relation to their perceptions of social inquiry and pre-sentence reports;

Provide feedback to the Probation Service, by way of written or verbal accounts, on completion of the study.

Who is Expected/Intended will Complete/Provide Data/Information Being Requested?

In relation to the Probation Service I would be grateful for the co-operation of probation officers and ancillary staff during any observation periods, whilst the research would also

benefit from the assistance of probation personnel in establishing contact with clients of the service. In addition, I would, at a later stage of the study, approach court personnel.

How Many Schedules/Interviews/Observations is it Intended Would Be Undertaken in Each Probation Service?

It is envisaged that somewhere in the region of 40-60 cases will form the basis of the study, although the exact number will be determined during the course of the fieldwork itself, in consultation with members of the Probation Service, and would depend in part on the additional workload this places on staff.

I feel that this quantity is necessary if I am to present an account which will acknowledge a generality of events within the complexities of their organisational context, rather than merely presenting what may otherwise be interpreted as isolated or atypical incidences.

How Long is it Estimated will be Required to Complete/Provide Each Schedule/Interview etc.?

It is difficult to present a rigid timetable at this stage, as the time spent with the Probation Service will obviously depend upon the length of time needed to reach the sample target outlined above.

Additional data, in the form of interviews with clients and court personnel, is likely to consist of no more than hour-long interview schedules - again, the time involved will be naturally determined by the number of participants.

Documentary analysis will be conducted as the research continues.

Is it Intended/Expected that the Research/Study will be Published?

The purpose of the research is to produce a thesis, for my Ph.D. qualification, to the University of Warwick. By convention, a copy of the thesis will be placed in the archives of the University library.

I would like to stress at this point that no individual, organisation or locality will be identified or identifiable as a result of any report that I produce. I take this opportunity to submit guarantees of confidentiality and anonymity to all who participate.

I would like to thank you again for your time, attention and anticipated co-operation in this matter.

(In spite of a detailed request for information relating to the proposed research, and the lengthy proposal which was submitted as a result of that, my request for access to this area of the probation service was refused:)

Document 9: Letter denying access

November 8, 1991

Dear Ms. Pavlovic,

Thank you for the detailed proposal you forwarded on 17 October.

I have now discussed your proposal with the senior managers of the Service but we have finally decided that we cannot meet your request to carry out the research in (this area).

There were two main reasons for our decision. Firstly, it seemed that your timetable clashed with ours. The Home Office National Standards for pre-sentence reports will be introduced from late 1992 and it did not seem to us that it would be acceptable to ask probation officers to co-operate with a research project at the same time they were implementing the changes.

Secondly, from mid-1992 the service will be introducing a new corporate plan and we know from experience that this will be a demanding time for all staff; certainly not the best time to give our full attention to a research project.

I am sorry we have not been able to help you. I trust you will find another service which is in a better position to co-operate.

Document 10: Authorisation of Access to Prisons

To Whom It May Concern

The bearer of this letter, **Ms. A. Pavlovic**, is a postgraduate student undertaking approved research with the Probation Service and working at the (area) office; address and telephone number as above.

Would you kindly afford her the usual facilities available to Probation Officers?

Her signature appears below, initialled by me (The Senior Probation Officer for the area), should you require same as further evidence of identification.

Thank you in anticipation of your kind co-operation.

(Signed; Senior Probation Officer)

Document 11: Letter of Acknowledgement to Probation Service on Completion of the Research

Dear (Senior Probation Officer,

I would like to thank you for your co-operation during my time with the Probation Service. My research was not only made possible by your personal efforts to accommodate my requests, but also very enjoyable, thanks to the hospitality of everyone concerned. Please express my gratitude to all officers concerned for allowing me to participate in their work with clients; I realise that my presence placed demands upon them and wish to thank each officer for their advice and assistance. I wish to convey special thanks to (the court probation officer) and (the court probation assistant) who did so much, on a daily basis, not only to advise and assist me in my research, but also to befriend me in the true sense of the word. Last, but in no sense least, I would like to thank all the staff in reception for their help. Each of you welcomed me as a colleague during my time with you; I shall be thinking of you all as I write my thesis and hope you will feel gratified to know that you have made a valuable and valued contribution.

APPENDIX B**Appendix B****Document 1: Letter to Probation Officers Requesting Access to Interviews With Clients**

Dear Colleague,

As I trust you are aware, I am a sociology graduate, now attached to the Law School at the University of Warwick, and have obtained the authority of the Probation Service to undertake research in relation to social inquiry reports.

My aim is to present a contextualised account of SIR's. In practice, this will involve my being present at any interviews with the offender relating to the report, attending court when the report is submitted and retaining, under secure conditions, a copy of the report for my own files. I do realise that this places demands upon individual officers and the Service, however minimal, and would like to offer some assurances at this stage.

I have had extensive experience of conducting research in a similar context to the current project, having spent two years working with criminal defence lawyers. As a result, I have a working knowledge of criminal proceedings and am sensitive to the special difficulties confronting probation officers and their charges. I am also conscious of the need to minimise any disruption the presence of an outsider can create and will take all steps necessary, placing myself very much in your hands, to ensure that my presence does not interfere in any way with working relationships.

No individual or organisation will be identified or identifiable as a result of the research, guarantees of confidentiality and anonymity being extended to all who participate.

The SIR request to which this letter is attached is one which I would very much like to include in the study. If you are able to assist me in this matter, please contact me at the (area) Probation office, where I shall be based for the next six months, with details of interview times with the offender. I shall confirm whether or not I am able to attend as, unavoidably, there will be some instances of overlapping appointments.

I would like to thank you for your anticipated co-operation in this matter.

Interviews with magistrates

Document 2: Interview Schedule

How long have you been serving as a magistrate? •

Are you a member of the probation liaison committee?

What is your personal background in relation to work?

When would you request a social inquiry report?

How important is the social inquiry report in helping you to make a sentencing decision?

To what extent should a social inquiry report make a recommendation as to sentence?

Do you consider that social inquiry reports represent an objective assessment of the sentencing options realistically open to the court?

Are the social inquiry reports of some officers given greater weight than those of others?

To what extent, if at all, do solicitors provide new information which is not contained in the report?

Which is more important in influencing the court's decision - the social inquiry report, or mitigation?

What are you looking for in a social inquiry report?

Do you think that the probation service is able to look at sentencing in an objective way and provide magistrates with dispassionate advice?

How important do you think that it is to avoid sending a person to prison unless absolutely necessary?

What do you consider to be a 'bad' report?

Do you think that the probation service is too close to its clients to be of any real value to the Bench?

Document 3: Letter of Acknowledgement to Magistrates

Dear (magistrate),

I would like to thank you for your hospitality and frankness during your recent participation in an interview I conducted relating to social inquiry reports. I appreciate that you voluntarily sacrificed your time in order to accommodate me in your, already demanding, schedule and hope that you will feel rewarded to know that you have made a valuable contribution to my research project.

Document 4

Interviews with offenders

Interview schedule

You've had a report done at some stage?

When was the last time you had a report done?

Can I ask you what offence you had been convicted of?

Who suggested that your case be adjourned for reports?

What did you think was the purpose of the report?

How/did you think it might help you?

What did you think the probation officer wanted to hear?

Did you feel able to be open and frank with the probation officer?

Had you thought, beforehand, about the story you were going to tell the probation officer?

Did you feel the probation officer was 'on your side'?

What did you think was the relationship between the probation officer and the court?

Did you see the report and read it?

Did the probation officer include everything you wanted him/her to in the report?

What sorts of things, if anything, were not included in the report?

Were you given the opportunity to change anything in the report?

Do you feel that your views were represented in the report, or the views of the probation officer?

What do you think the court wanted to hear in the report?

Who did you feel was most helpful to your case - the probation officer or your solicitor?

How did you see the relationship between your solicitor and the probation officer?

Do you think its fair to write reports on people?

Do you think the probation process is fair?

Is there anything else you would like to tell me about the court or the probation process?

Document 5**Letter of acknowledgement to the Probation Service**

Dear (Senior Probation Officer),

I would like to thank you for your co-operation during my time with the Probation Service. My research was not only made possible by your personal efforts to accommodate my requests, but also very enjoyable, thanks to the hospitality of everyone concerned. Please express my gratitude to all officers concerned for allowing me to participate in their work with clients; I realise that my presence placed demands upon them and wish to thank each officer for their advice and assistance. I wish to convey special thanks to (the court probation officer) and (the court probation assistant) who did so much, on a daily basis, not only to advise and assist me in my research, but also to befriend me in the true sense of the word. Last, but in no sense least, I would like to thank all the staff in reception for their help. Each of you welcomed me as a colleague during my time with you; I shall be thinking of you all as I write my thesis and hope you will feel gratified to know that you have made a valuable and valued contribution.

DIVISION

OFF.

NOTICE OF

REMAND FOR:-
COMMITTAL
ORDER
SENTENCE

REF. NO.

From Court / / to Court / /		
Surname (Alias)	First Names	Age D. of B. Marital Status
Address		Bail Awaiting Surety Custody
Tel No. P.S.D.		
Solicitor	Police Officer	
Tel. No.	Station	

Offence/s:- Co-accused

& Circumstances

Indication of offence seriousness: Not Serious - Fine/CD
 Serious Enough - Community
 So Serious - Custody

Previous convictions (and/or any current or previous involvement with P.O. or other agencies)

Date	Court	Offence	Result	Officer
------	-------	---------	--------	---------

Plea	Trial/Sentence/Appeal	Consent to PSR by solicitor/defendant	Yes/No
Officer Responsible for PSR		Officer Initiating this form	
Office		Office	

Further Remands								
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FINAL RESULT IN COURT ON / /

BENCH

REMARKS

SENTENCE

		Notify result to	Case record by	SPO to allocate	
--	--	------------------	----------------	-----------------	--

Form to be used by Probation Officers for transmission within the Service of information concerning persons appearing before the Courts

OTHER DETAILS: Availability, details of family, including addresses where necessary or any other useful information). WHERE NO PSR WILL EXIST, OBTAIN FULLEST POSSIBLE DETAILS

POST SENTENCE ORDER INTERVIEW: (Indicate problems raised, attitudes, action taken or recommended, service of order, instructions given, etc)

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